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Bill 123

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An Act to revise the Professional Engineers Act

The Hon. R. McMurtry
Attorney General

1st Reading November 17th, 1983
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTES

The Bill revises the *Professional Engineers Act*. The main features of the revision are:

1. The Bill provides a new definition of the practice of professional engineering for the purpose of precluding those who are not authorized from engaging in the practice. The new definition does not set forth every action that a professional engineer may perform but rather prescribes those acts that may not be performed by a person who is not a professional engineer.
2. The Lieutenant Governor in Council will appoint to the Council of the Association of Professional Engineers of Ontario not fewer than five and not more than seven persons who are members of the Association and not fewer than three and not more than five persons who are not professional engineers.
3. The establishment of the Registration Committee, to hear licensing matters not related to academic or experience qualifications, with provision for appeal to the Divisional Court. Determinations as to academic qualifications will be made by the Association's Committee on Academic Requirements, and determinations as to experience qualifications will be made by the Association's Committee on Experience Requirements.
4. The establishment of the Complaints Committee, to consider and investigate complaints regarding members of the Association and holders of limited licences, with power to refer matters to the Discipline Committee.
5. The establishment of the Discipline Committee, to hear and determine specific allegations of professional misconduct or incompetence, with power to impose a wide range of penalties and provision for appeal to the Divisional Court.
6. The establishment of the Fees Mediation Committee, to mediate complaints in respect of fees.
7. The establishment of the office of Complaints Review Councillor with power to examine the procedures for the treatment of complaints by the Association and to review the treatment of any specific complaint.
8. A distinction is made between the practice of professional engineering, for which licences and limited licences are to be issued, and the business of providing services that are within the practice of professional engineering, for which certificates of authorization are to be issued.
9. Provision is made for the issuance of limited licences.
10. The authority of the Council of the Association to make regulations will be subject to the approval of the Lieutenant Governor in Council and to prior review by the Minister. In addition, the Minister may advise the Council with respect to the implementation of the Act and the regulations.

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Bill 123 1983

An Act to revise the Professional Engineers Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act, Interpretation

(a) "Academic Requirements Committee" means the Academic Requirements Committee appointed pursuant to the regulations;

(b) "architect" means a person who is licensed or who holds a certificate of practice or a temporary licence under the *Architects Act, 1983*; 1983, c. ...

(c) "Association" means Association of Professional Engineers of Ontario;

(d) "by-laws" means by-laws made under this Act;

(e) "certificate of authorization" means certificate of authorization issued under this Act to engage in the business of providing services that are within the practice of professional engineering;

(f) "Complaints Review Councillor" means Complaints Review Councillor appointed under this Act;

(g) "Council" means Council of the Association;

(h) "Experience Requirements Committee" means the Experience Requirements Committee appointed pursuant to the regulations;

(i) "Joint Practice Board" means Joint Practice Board established under the *Architects Act, 1983*;

(j) "licence" means licence to engage in the practice of professional engineering issued under this Act;

(k) "limited licence" means limited licence to engage in the practice of professional engineering issued under this Act;

(l) "Minister" means the Attorney General or such other member of the Executive Council as is designated by the Lieutenant Governor in Council;

(m) "practice of professional engineering" means any act of designing, composing of plans and specifications, evaluating, advising, reporting, directing or supervising wherein the safeguarding of life, health, property or the public welfare is concerned and that requires the application of engineering principles;

(n) "professional engineer" means a person who holds a licence or a temporary licence;

(o) "Registrar" means Registrar of the Association;

(p) "regulations" means regulations made under this Act;

(q) "temporary licence" means temporary licence to engage in the practice of professional engineering issued under this Act.

Association continued

2.—(1) The Association of Professional Engineers of the Province of Ontario, a body corporate, is continued as a corporation without share capital under the name of "Association of Professional Engineers of Ontario".

Head office

(2) The head office of the Association shall be at The Municipality of Metropolitan Toronto.

Principal object

(3) The principal object of the Association is to regulate the practice of professional engineering and to govern its members, holders of certificates of authorization, holders of temporary licences and holders of limited licences in accordance with this Act, the regulations and the by-laws in order that the public interest may be served.

Additional objects

(4) For the purpose of carrying out its principal object, the Association has the following additional objects:

1. To establish, maintain and develop standards of knowledge and skill among its members.

2. To establish, maintain and develop standards of qualification and standards of practice for the practice of professional engineering.

3. To establish, maintain and develop standards of professional ethics among its members.

4. To promote public awareness of the role of the Association.

5. To perform such other duties and exercise such other powers as are imposed or conferred on the Association by or under any Act.

Capacity and powers of Association

(5) For the purpose of carrying out its objects, the Association has the capacity and the powers of a natural person.

Council of Association

3.—(1) The Council of the Association is continued and shall be the governing body and board of directors of the Association and shall manage and administer its affairs.

Composition of Council

(2) The Council shall be composed of,

(a) not fewer than fifteen and not more than twenty persons who are members of the Association and who are elected by the members of the Association as provided by the regulations;

(b) not fewer than five and not more than seven persons who are members of the Association and who are appointed by the Lieutenant Governor in Council;

(c) not fewer than three and not more than five persons who are not members of the governing body of a self-regulating licensing body under any other Act or licensed under this Act and who are appointed by the Lieutenant Governor in Council; and

(d) the holders of offices prescribed by the regulations who are not members of the Council under clause (a), (b) or (c).

Idem

(3) No person shall be elected or appointed to the Council unless he is a Canadian citizen resident in Ontario.

Remuneration of lay members

(4) The persons appointed under clause (2) (c) shall be paid, out of the moneys appropriated therefor by the Legislature, such expenses and remuneration as is determined by the Lieutenant Governor in Council.

Term of office of appointed members

(5) In each year, the persons to be appointed by the Lieutenant Governor in Council shall be appointed for one year, two year or three year terms in order that one-third, or as near thereto as possible, shall be appointed in each year.

Qualifications to vote

(6) Every member of the Association who is not in default of payment of an annual fee prescribed by the by-laws is qualified to vote at an election of members of the Council.

Officers

(7) The Association shall have the officers provided for by the regulations.

Registrar and staff

(8) The Council shall appoint during pleasure a Registrar and may appoint one or more deputy registrars who shall have the powers of the Registrar for the purposes of this Act, and may appoint such other persons as are from time to time necessary or desirable in the opinion of the Council to perform the work of the Association.

Quorum

(9) A majority of the members of the Council constitutes a quorum.

Vacancies

(10) Where one or more vacancies occur in the membership of the Council, the members remaining in office constitute the Council so long as their number is not fewer than a quorum.

Filling of vacancy

(11) A vacancy on the Council caused by the death, resignation, removal or incapacity to act of an elected member of the Council shall be filled as soon as practicable by a member of the Association,

(a) where a quorum of the Council remains in office, appointed by the majority of the Council, and the member so appointed shall be deemed to be an elected member of the Council; or

(b) where no quorum of the Council remains in office, elected in accordance with the regulations,

and the member so appointed or elected shall hold office for the unexpired portion of the term of office of the member whose office he is elected or appointed to fill.

Meetings of Council

(12) The Council shall meet at least four times a year.

Continuation of Council members

(13) The members of the Council of the Association of Professional Engineers of the Province of Ontario who were elected or appointed and in office immediately before this Act comes into force shall continue in office and shall be deemed to be elected or appointed, as the case requires, under subsection

(2) until the expiration of the term for which they were elected or appointed or until the office otherwise becomes vacant.

Annual meetings

4. The Association shall hold an annual meeting of the members of the Association not more than fifteen months after the holding of the last preceding annual meeting.

Membership

5.—(1) Every person who holds a licence is a member of the Association subject to any term, condition or limitation to which the licence is subject.

Resignation of membership

(2) A member may resign his membership by filing with the Registrar his resignation in writing and his licence is thereupon cancelled, subject to the continuing jurisdiction of the Association in respect of any disciplinary action arising out of his professional conduct while a member.

Powers of Minister

6. In addition to his other powers and duties under this Act, the Minister may,

(a) review the activities of the Council;

(b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;

(c) advise the Council with respect to the implementation of this Act and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures.

Regulations

7.—(1) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations,

1. fixing the number of members to be elected to the Council under clause 3 (2) (a) and defining constituencies, and prescribing the number of representatives;

2. respecting and governing the qualifications, nomination, election and term or terms of office of the members to be elected to the Council, and controverted elections;

3. prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council;

4. prescribing positions of officers of the Association and providing for their election or appointment;

5. respecting the composition of the committees required by this Act, other than the Complaints Committee and the Discipline Committee, the mechanism of the appointment of members of the committees and procedures ancillary to those specified in this Act in respect of any committee;

6. respecting matters of practice and procedure before committees required under this Act not inconsistent with this Act and the *Statutory Powers Procedure Act*;

R.S.O. 1980, c. 484

7. prescribing the quorums of the committees required by this Act other than the Complaints Committee and the Discipline Committee;

8. prescribing classes of persons whose interests are related to those of the Association and the privileges of members of the classes in relation to the Association;

9. respecting any matter ancillary to the provisions of this Act with regard to the issuing, suspension and revocation of licences, certificates of authorization, temporary licences and limited licences, including but not limited to regulations respecting,

   i. the scope, standards and conduct of any examination set or approved by the Council as a licensing requirement,

   ii. the curricula and standards of professional training programs offered by the Council,

   iii. the academic, experience and other requirements for admission into professional training programs,

   iv. classes of licences,

   v. the academic and experience requirements for the issuance of a licence or any class of licence, and

   vi. classes of certificates of authorization, temporary licences and limited licences, including prescribing requirements and qualifi-

cations for the issuance of specified classes of certificates of authorization, temporary licences and limited licences, and terms and conditions that shall apply to specified classes of certificates of authorization, temporary licences and limited licences;

10. prescribing forms of applications for licences, certificates of authorization, temporary licences and limited licences and requiring their use;

11. requiring the making of returns of information in respect of the holdings of shares and the officers and directors of corporations that apply for or hold certificates of authorization and in respect of the interests of partners that apply for or hold certificates of authorization and prescribing and requiring the use of forms of such returns;

12. requiring and governing the signing and sealing of documents and designs by members of the Association, holders of temporary licences and holders of limited licences, specifying the forms of seals and respecting the issuance and ownership of seals;

13. requiring the making of returns of information by members of the Association and holders of certificates of authorization, temporary licences and limited licences in respect of names, addresses, telephone numbers, professional associates, partners, employees and professional liability insurance, and prescribing and requiring the use of forms of such returns;

14. requiring and governing the disclosure of the identity of holders of certificates of authorization on documents and designs involving the practice of professional engineering issued by such holders and specifying the form and manner of such disclosure;

15. governing the use of names and designations in the practice of professional engineering by members of the Association and holders of certificates of authorization, temporary licences and limited licences;

16. providing for the maintenance and inspection of registers of members of the Association, holders of temporary licences, holders of limited licences and holders of certificates of authorization;

17. prescribing and governing standards of practice and performance standards for the profession;

18. providing for the setting of schedules of suggested fees for professional engineering services and for the publication of the schedules;

19. respecting the advertising of the practice of professional engineering;

20. prescribing a code of ethics;

21. defining professional misconduct for the purposes of this Act;

22. providing for the designation of members of the Association and holders of temporary licences as specialists, prescribing the qualifications and requirements for designation as a specialist, providing for the suspension or revocation of such a designation and for the regulation and prohibition of the use of the designation by members of the Association, a holder of a temporary licence or a certificate of authorization;

23. providing for the designation of members of the Association as consulting engineers, prescribing the qualifications and requirements for designation as a consulting engineer, providing for the suspension or revocation of such a designation and for the regulation and prohibition of the use of the designation by members of the Association, a holder of a temporary licence or a certificate of authorization;

24. prescribing the minimum requirements for professional liability insurance, requiring the delivery to the Registrar of proof of such insurance and prescribing the form of such proof and the manner and time of the delivery;

25. exempting any class of holders of certificates of authorization from the requirement to be insured in respect of professional liability under such special circumstances in the public interest as the Council considers advisable and classifying holders of certificates of authorization for the purpose of such exemption;

26. prescribing the amount of and requiring the payment of annual fees by holders of certificates of authoriza-

tion, temporary and limited licences and by students and members of related classes recognized by the Association, and fees for temporary licences, limited licences, certification, registration, designations, examinations and continuing education, including penalties for late payment, and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;

27. providing for the entering into of arrangements by the Association for its members and holders of certificates of authorization, temporary licences and limited licences respecting indemnity for professional liability and requiring the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members and holders of certificates of authorization, temporary licences and limited licences in respect of such indemnity for professional liability;

28. providing for continuing education of members;

29. respecting the duties and authority of the Registrar;

30. prescribing qualifications and requirements that shall be complied with to obtain the reinstatement of a licence, certificate of authorization, temporary licence or limited licence that was cancelled by the Registrar;

31. classifying and exempting any class of holders of licences, certificates of authorization, temporary licences or limited licences from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable;

32. exempting any act within the practice of professional engineering from the application of this Act.

Distribution of regulations

(2) A copy of each regulation made under subsection (1),

(a) shall be forwarded to each member of the Association and to each holder of a certificate of authorization, temporary licence or limited licence; and

(b) shall be available for public inspection in the office of the Association.

By-laws

8.—(1) The Council may pass by-laws relating to the administrative and domestic affairs of the Association not

inconsistent with this Act and the regulations and, without limiting the generality of the foregoing,

1. prescribing the seal and other insignia of the Association and providing for their use;

2. providing for the execution of documents by the Association;

3. respecting banking and finance;

4. fixing the financial year of the Association and providing for the audit of the accounts and transactions of the Association;

5. respecting the calling, holding and conducting of meetings of the Council and the duties of members of Council;

6. providing for meetings of the Council and committees, except in a proceeding in respect of a membership, certificate of authorization, temporary licence or limited licence, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and a member of the Council or committee participating in a meeting in accordance with such by-law shall be deemed to be present in person at the meeting;

7. providing that the Council or a committee may act upon a resolution consented to by the signatures of all members of the Council or the committee except in a proceeding in respect of a licence, certificate of authorization, temporary licence or limited licence, and a resolution so consented to in accordance with such a by-law is as valid and effective as if passed at a meeting of the Council or the committee duly called, constituted and held for that purpose;

8. respecting the calling, holding and conducting of meetings of the membership of the Association;

9. authorizing voting by mail by the general membership of the Association on any of the business of the Association and prescribing procedures for such voting;

10. prescribing the duties of officers of the Association;

11. providing for the appointment of inspectors for the purposes of this Act;

12. prescribing forms and providing for their use;

13. providing procedures for the making, amending and revoking of the by-laws;

14. respecting management of the property of the Association;

15. providing for the appointment, composition, powers, duties and quorums of additional or special committees;

16. respecting the application of the funds of the Association and the investment and reinvestment of any of its funds not immediately required, and for the safekeeping of its securities;

17. prescribing the amount and requiring the payment of annual fees by members of the Association;

18. respecting the borrowing of money by the Association and the giving of security therefor;

19. respecting membership of the Association in other organizations the objects of which are not inconsistent with and are complementary to those of the Association, the payment of annual assessments and provision for representatives at meetings;

20. providing for the establishment and dissolution and governing the operation of groups of members of the Association and respecting grants by the Association to any such groups;

21. authorizing the making of grants for any purpose that may tend to advance knowledge of professional engineering education, or maintain or improve the standards of practice in professional engineering or support and encourage public information and interest in the past and present role of professional engineering in society;

22. respecting scholarships, bursaries and prizes related to the study of professional engineering;

23. respecting the establishment and operation and use of publications of the Association;

24. providing for group insurance plans, other than for professional liability, an employment advisory service and retirement savings plans in which members of the Association may participate on a voluntary basis;

25. regarding such other matters as are entailed in carrying on the business of the Association and are not included in section 7.

When by-laws come into force

(2) A by-law passed by the Council is not effective until confirmed by the members of the Association.

Confirmation of by-laws

(3) A by-law passed by the Council may be confirmed by the members of the Association only by means of a vote conducted by mail.

Distribution of by-laws

(4) A copy of the by-laws made under subsection (1) and amendments thereto,

(a) shall be forwarded to the Minister;

(b) shall be forwarded to each member of the Association; and

(c) shall be available for public inspection in the office of the Association.

Official publication

9. The Council shall establish and designate an official publication of the Association.

Establishment of committees

10.—(1) The Council shall establish and appoint the following committees:

(a) Executive Committee;

(b) Academic Requirements Committee;

(c) Experience Requirements Committee;

(d) Registration Committee;

(e) Complaints Committee;

(f) Discipline Committee;

(g) Fees Mediation Committee,

and may establish such other committees as the Council from time to time considers necessary.

(2) Where one or more vacancies occur in the membership of a committee, the members remaining in office constitute the committee so long as their number is not fewer than the prescribed quorum. Vacancies

11. The Council may delegate to the Executive Committee the authority to exercise any power or perform any duty of the Council other than to make, amend or revoke a regulation or a by-law. Executive Committee

12.—(1) No person shall engage in the practice of professional engineering or hold himself out as engaging in the practice of professional engineering unless the person is the holder of a licence, a temporary licence or a limited licence. Licence or limited licence required

(2) No person shall offer to the public or engage in the business of providing to the public services that are within the practice of professional engineering except under and in accordance with a certificate of authorization. Certificate of authorization

(3) Subsections (1) and (2) do not apply to prevent a person, Exceptions

(a) from doing an act that is within the practice of professional engineering in relation to machinery, equipment, other than equipment of a structural nature, tools and dies for use in the facilities of the person's employer in the production of products by the person's employer;

(b) from doing an act that is within the practice of professional engineering where a professional engineer assumes responsibility for the services within the practice of professional engineering to which the act is related;

(c) from doing an act that is exempted by the regulations from the application of this Act.

(4) Subsections (1) and (2) do not apply to the preparation or provision of a design for the construction, enlargement or alteration of a building, Idem

(a) that is not more than three storeys and not more than 600 square metres in gross area as constructed, enlarged or altered;

(b) that is used or intended for business occupancy, personal services occupancy, mercantile occupancy or industrial occupancy; and

(c) is not designed to house and is not part of an apparatus, process, facility or works the design of which is within the practice of professional engineering.

Idem

(5) Subsections (1) and (2) do not apply to,

(a) the preparation or provision of a design for the construction, enlargement or alteration of a building that is not more than three storeys and that is used or intended for residential occupancy and,

(i) that contains one dwelling unit or two attached dwelling units each of which is constructed directly on grade, or

(ii) that is not more than 600 square metres in building area as constructed, enlarged or altered and contains three or more attached dwelling units, each of which is constructed directly on grade, with no dwelling unit constructed above another dwelling unit; or

(b) the preparation or provision of a design for alterations within a dwelling unit that will not affect or are not likely to affect fire separations, firewalls, the strength or safety of the building or the safety of persons in the building.

Idem

(6) The following rules govern the relationship between professional engineers and architects and subsections (1) and (2) do not apply to prevent an architect from preparing or providing a design for and carrying out the general review of the construction, enlargement or alteration of a building in accordance with these rules:

1. Only an architect may prepare or provide a design for the construction, enlargement or alteration of a building,

i. used or intended for residential occupancy,

ii. that exceeds 600 square metres in gross area, and

iii. that does not exceed three storeys,

and carry out the general review of the construction, enlargement or alteration of the building but an architect who prepares or provides such a design may engage a professional engineer to provide services

within the practice of professional engineering in connection with the design and the professional engineer may provide the services.

2. A professional engineer or an architect may prepare or provide a design for the construction, enlargement or alteration of a building,

   i. that exceeds 600 square metres in gross area or three storeys, and

   ii. that is used or intended for,

      A. industrial occupancy, or

      B. mixed occupancy consisting of industrial occupancy and one or more other occupancies, where none of the other occupancies exceeds 600 square metres of the gross area,

   but only a professional engineer may provide services within the practice of professional engineering in connection with the design.

3. A professional engineer and an architect together shall prepare or provide the design for the construction, enlargement or alteration of a building used or intended for,

   i. assembly occupancy,

   ii. institutional occupancy,

   iii. business occupancy or personal services occupancy that exceeds 600 square metres in gross area or three storeys,

   iv. mercantile occupancy that exceeds 600 square metres in gross area or three storeys,

   v. residential occupancy that exceeds three storeys,

   vi. mixed occupancy consisting of industrial occupancy and one or more other occupancies, where one of the other occupancies exceeds 600 square metres in gross area,

vii. mixed occupancy consisting of a combination of,

A. assembly occupancy and any other occupancy, except industrial occupancy,

B. institutional occupancy and any other occupancy, except industrial occupancy,

C. one or more of,

1. business occupancy,

2. personal services occupancy, or

3. mercantile occupancy,

and any other occupancy, except assembly occupancy, institutional occupancy or industrial occupancy,

where the building as constructed, enlarged or altered exceeds 600 square metres in gross area or three storeys,

D. residential occupancy that exceeds three storeys and any other occupancy, where the building as constructed, enlarged or altered exceeds 600 square metres in gross area, or

viii. any other occupancy where the building as constructed, enlarged or altered exceeds 600 square metres in gross area or three storeys,

and, subject to rule 4, the architect shall provide services that are within the practice of architecture and the professional engineer shall provide services that are within the practice of professional engineering, and a professional engineer may provide a design for the industrial occupancy of a mixed occupancy described in subparagraph vi.

4. An architect may perform services that are within the practice of professional engineering in preparing or providing a design for and carrying out the general review of the construction, enlargement or alteration of a building described in rule 2 or 3 where to do so does not constitute a substantial part of the services within the practice of professional engineering

related to the construction, enlargement or alteration of the building and is necessary,

i. for the construction, enlargement or alteration of the building and is incidental to other services provided as part of the practice of architecture by the architect in respect of the construction, enlargement or alteration of the building, or

ii. for co-ordination purposes.

5. A professional engineer may perform services that are within the practice of architecture in preparing or providing a design for and carrying out the general review of the construction, enlargement or alteration of a building described in rule 1 or 3 where to do so does not constitute a substantial part of the services within the practice of architecture related to the construction, enlargement or alteration of the building and is necessary,

i. for the construction, enlargement or alteration of the building and is incidental to other services provided as part of the practice of professional engineering by the professional engineer in respect of the construction, enlargement or alteration of the building, or

ii. for co-ordination purposes.

6. Only an architect may carry out the general review of the construction, enlargement or alteration of a building,

i. that is constructed, enlarged or altered in accordance with a design prepared or provided by an architect, or

ii. in relation to services that are provided by an architect in connection with the design in accordance with which the building is constructed, enlarged or altered.

7. Only a professional engineer may carry out the general review of the construction, enlargement or alteration of a building,

i. that is constructed, enlarged or altered in accordance with a design prepared or provided by a professional engineer, or

ii. in relation to services that are provided by a professional engineer in connection with the design in accordance with which the building is constructed, enlarged or altered.

8. An architect or a professional engineer may act as prime consultant for the construction, enlargement or alteration of a building.

Idem

(7) Subsections (1) and (2) do not apply to prevent a person from carrying out a general review of the construction, enlargement or alteration of a building that does not or is not intended to take the place of a general review by a professional engineer.

Interpretation

(8) In this section,

(a) "assembly occupancy" means occupancy for gatherings of persons for civic, educational, political, recreational, religious, social, travel or other similar purpose, or for the consumption of food or drink;

(b) "building" means a structure consisting of a wall, roof and floor, or any one or more of them;

(c) "building area" means the greatest horizontal area of a building within the outside surface of exterior walls or, where a firewall is to be constructed, within the outside surface of exterior walls and the centre line of firewalls;

(d) "business occupancy" means occupancy for the transaction of business;

(e) "construction" means the doing of anything in the erection, installation, extension or repair of a building and includes the installation of a building unit fabricated or moved from elsewhere, and "constructed" has a corresponding meaning;

(f) "design" means a plan, sketch, drawing, graphic representation or specification intended to govern the construction, enlargement or alteration of a building or a part of a building;

(g) "dwelling unit" means a room or suite of rooms used or intended to be used as a domicile by one or more

persons and usually containing cooking, eating, living, sleeping and sanitary facilities;

(h) "fire separation" means a construction assembly that acts as a barrier against the spread of fire and that may or may not have a fire-resistance rating or a fire-protection rating;

(i) "firewall" means a type of fire separation of non-combustible construction that subdivides a building or separates adjoining buildings to resist the spread of fire and that has a fire-resistance rating as prescribed in Ontario Regulation 583/83 (known as the Building Code), as amended from time to time, and has structural stability to remain intact under fire conditions for the fire-resistance time for which it is rated;

(j) "general review", in relation to the construction, enlargement or alteration of a building, means an examination of the building to determine whether the construction, enlargement or alteration is in general conformity with the design governing the construction, enlargement or alteration, and reporting thereon;

(k) "grade" means the lowest of the average levels of finished ground adjoining each exterior wall of a building, but does not include localized depressions such as for vehicle or pedestrian entrances;

(l) "graphic representation" means a representation produced by electrical, electronic, photographic or printing methods and includes a representation produced on a video display terminal;

(m) "gross area" means the total area of all floors above grade measured between the outside surfaces of exterior walls or, where no access or building service penetrates a firewall, between the outside surfaces of exterior walls and the centre line of firewalls;

(n) "industrial occupancy" means occupancy for assembling, fabricating, manufacturing, processing, repairing or storing of goods or materials or for producing, converting, processing or storing of energy, waste or natural resources;

(o) "institutional occupancy" means occupancy for the harbouring, housing or detention of persons who

require special care or treatment on account of their age or mental or physical limitations or who are involuntarily detained;

(p) "mercantile occupancy" means occupancy or use for displaying or selling retail goods, wares or merchandise;

(q) "personal services occupancy" means occupancy for the rendering or receiving of professional or personal services;

(r) "residential occupancy" means occupancy for providing sleeping accommodation for persons, but does not include institutional occupancy.

Proof of practice

(9) For the purposes of this section, proof of the performance of one act in the practice of professional engineering on one occasion is sufficient to establish engaging in the practice of professional engineering.

Corporation

13. A corporation that holds a certificate of authorization may provide services that are within the practice of professional engineering.

Issuance of licence

14.—(1) The Registrar shall issue a licence to a natural person who applies therefor in accordance with the regulations and,

(a) is a citizen of Canada or has the status of a permanent resident of Canada;

(b) is not less than eighteen years of age;

(c) has complied with the academic requirements specified in the regulations for the issuance of the licence and has passed such examinations as the Council has set or approved in accordance with the regulations or is exempted therefrom by the Council;

(d) has complied with the experience requirements specified in the regulations for the issuance of the licence; and

(e) is of good character.

Grounds for refusal to issue licence

(2) The Registrar may refuse to issue a licence to an applicant where the Registrar is of the opinion, upon reasonable and probable grounds, that the past conduct of the applicant affords grounds for belief that the applicant will not engage in the prac-

tice of professional engineering in accordance with the law and with honesty and integrity.

Referral to committee

(3) The Registrar, on his own initiative, may refer and on the request of an applicant shall refer the application of the applicant for the issuance of a licence,

(a) to the Academic Requirements Committee for a determination as to whether or not the applicant has met the academic requirements prescribed by the regulations for the issuance of the licence;

(b) to the Experience Requirements Committee for a determination as to whether or not the applicant has met the experience requirements prescribed by the regulations for the issuance of the licence; or

(c) first to the Academic Requirements Committee and then to the Experience Requirements Committee for determinations under clauses (a) and (b).

Determination by committee

(4) A determination by a committee under subsection (3) is final and is binding on the Registrar and on the applicant.

Hearing

(5) A committee is not required to hold or to afford to any person a hearing or an opportunity to make submissions before making a determination under subsection (3).

Notice of determination

(6) The Registrar shall give notice to the applicant of a determination by a committee under subsection (3).

Issuance of certificate of authorization

15.—(1) The Registrar shall issue a certificate of authorization to a natural person, a partnership or a corporation that applies therefor in accordance with the regulations if the requirements and qualifications for the issuance of the certificate of authorization set out in the regulations are met.

General and standard certificate

(2) Where the Registrar proposes to issue a certificate of authorization to an applicant, the Registrar shall issue a standard certificate of authorization or, where the primary function of the applicant is or will be to provide to the public services in the practice of professional engineering and the applicant requests a general certificate of authorization, the Registrar shall issue a general certificate of authorization to the applicant.

Partnership of corporations

(3) The Registrar shall issue a standard certificate of authorization to a partnership of corporations that applies therefor in accordance with the regulations if at least one of the corporations holds a certificate of authorization.

Terms and conditions

(4) Where a holder of a temporary licence assumes responsibility for and supervises the practice of professional engineering related to the services provided by the holder of a certificate of authorization, the certificate of authorization is subject to the same terms and conditions prescribed by the regulations that apply to the temporary licence.

Suspension of effect of certificate of authorization

(5) A holder of a certificate of authorization ceases to be entitled to offer to the public or to provide to the public services that are within the practice of professional engineering as soon as there is no holder of a licence or a temporary licence who assumes responsibility for and supervises the practice of professional engineering provided by the holder of the certificate of authorization.

Notice to Registrar by holder of certificate of authorization

(6) The holder of a certificate of authorization must give notice to the Registrar when there ceases to be a holder of a licence or a temporary licence who assumes responsibility for and supervises the practice of professional engineering by the holder of the certificate of authorization and when the holder of the certificate of authorization designates another holder of a licence or a temporary licence to assume such responsibility and carry out such supervision.

Notice to Registrar by person in position of professional responsibility

(7) A holder of a licence or a temporary licence who ceases to be responsible for and to supervise the practice of professional engineering by a holder of a certificate of authorization as the person so designated by the holder of the certificate of authorization shall give notice of the cessation forthwith to the Registrar.

Past conduct

(8) The Registrar may refuse to issue or may suspend or revoke a certificate of authorization where the Registrar is of the opinion, upon reasonable and probable grounds,

(a) that the past conduct of a person who is in a position of authority or responsibility in the operation of the business of the applicant for or the holder of the certificate of authorization affords grounds for the belief that the applicant or holder will not engage in the business of providing services that are within the practice of professional engineering in accordance with the law and with honesty and integrity;

(b) that the holder of the certificate of authorization does not meet the requirements or the qualifications for the issuance of the certificate of authorization set out in the regulations; or

(c) that there has been a breach of a condition of the certificate of authorization.

Issuance of licence or certificate of authorization on direction of Council

16. The Registrar shall issue a licence or a certificate of authorization upon a direction of the Council made in accordance with a recommendation by the Joint Practice Board.

Supervision by professional engineer

17.—(1) It is a condition of every certificate of authorization that the holder of the certificate shall provide services that are within the practice of professional engineering only under the personal supervision and direction of a member of the Association or the holder of a temporary licence.

Professional responsibility of supervising professional engineer

(2) A member of the Association or a holder of a temporary licence who personally supervises and directs the providing of services within the practice of professional engineering by a holder of a certificate of authorization or who assumes responsibility for and supervises the practice of professional engineering related to the providing of services by a holder of a certificate of authorization is subject to the same standards of professional conduct and competence in respect of the services and the related practice of professional engineering as if the services were provided or the practice of professional engineering was engaged in by the member of the Association or the holder of the temporary licence.

Issuance of temporary licence or limited licence

18.—(1) The Registrar shall issue a temporary licence or a limited licence to a natural person who applies therefor in accordance with the regulations and who meets the requirements and qualifications for the issuance of the temporary licence or the limited licence set out in the regulations, whether or not the applicant is a Canadian citizen or has the status of a permanent resident of Canada.

Ground for refusal to issue temporary licence or limited licence

(2) The Registrar may refuse to issue a temporary licence or a limited licence to an applicant where the Registrar is of the opinion, upon reasonable and probable grounds, that the past conduct of the applicant affords grounds for belief that the applicant will not engage in the practice of professional engineering in accordance with the law and with honesty and integrity.

Referral to committee

(3) Subsections 14 (3) to (6) (which relate to the Academic Requirements Committee and the Experience Requirements Committee) apply with necessary modifications in respect of an applicant for a temporary licence or a limited licence.

Application of subs. (1)

(4) Subsection (1) does not apply in respect of a member of the Association or a holder of a certificate of authorization.

Membership

(5) A holder of a temporary licence or a limited licence is not a member of the Association.

Hearing by Registration Committee

19.—(1) Where the Registrar proposes,

(a) to refuse an application for a licence, a temporary licence or a limited licence; or

(b) to refuse to issue, to suspend or to revoke a certificate of authorization,

the Registrar shall serve notice of his proposal, together with written reasons therefor, on the applicant.

Exceptions

(2) Subsection (1) does not apply in respect of a proposal to refuse to issue a licence, a temporary licence or a limited licence where,

(a) the Academic Requirements Committee has determined that the applicant has not met the academic requirements set out in the regulations for the issuance of the licence, the temporary licence or the limited licence;

(b) the Experience Requirements Committee has determined that the applicant has not met the experience requirements set out in the regulations for the issuance of the licence, the temporary licence or the limited licence; or

(c) the applicant previously held a licence, a certificate of authorization, a temporary licence or a limited licence that was suspended or revoked as a result of a decision of the Discipline Committee.

Notice

(3) A notice under subsection (1) shall state that the applicant is entitled to a hearing by the Registration Committee if the applicant mails or delivers, within thirty days after the notice under subsection (1) is served on the applicant, notice in writing requiring a hearing by the Registration Committee and the applicant may so require such a hearing.

Power of Registrar where no hearing

(4) Where the applicant does not require a hearing by the Registration Committee in accordance with subsection (3), the Registrar may carry out the proposal stated in the notice under subsection (1).

Hearing by Registration Committee

(5) Where an applicant requires a hearing by the Registration Committee in accordance with subsection (3), the Registration Committee shall appoint a time for, give notice of and shall hold the hearing.

Continuation on expiry of committee membership

(6) Where a proceeding is commenced before the Registration Committee and the term of office on the Council or on the committee of a member sitting for the hearing expires or is terminated other than for cause before the proceeding is disposed of but after evidence is heard, the member shall be deemed to remain a member of the Registration Committee for the purpose of completing the disposition of the proceeding in the same manner as if the member's term of office had not expired or been terminated.

Powers of Registration Committee

(7) Following upon a hearing under this section in respect of a proposal by the Registrar, the Registration Committee may, by order,

(a) where the committee is of the opinion upon reasonable grounds that the applicant meets the requirements and qualifications of this Act and the regulations and will engage in the practice of professional engineering or in the business of providing services that are within the practice of professional engineering with competence and integrity, direct the Registrar to issue a licence, certificate of authorization, temporary licence or limited licence, as the case may be, to the applicant;

(b) where the committee is of the opinion upon reasonable grounds that the applicant does not meet the requirements and qualifications of this Act and the regulations,

(i) direct the Registrar to refuse to issue a licence, certificate of authorization, temporary licence or limited licence, or to suspend or revoke the certificate of authorization issued to the applicant, as the case may be, or

(ii) where the committee is of the opinion upon reasonable grounds that the applicant will engage in the practice of professional engineering with competence and integrity, exempt the applicant from any of the requirements of this Act and the regulations and direct the Registrar to issue a licence, certificate of authorization, temporary licence or limited licence, as the case may be; or

(c) where the committee is of the opinion upon reasonable grounds that it is necessary in order to ensure that the applicant will engage in the practice of professional engineering or in the business of providing services that are within the practice of professional engineering with competence and integrity, direct the Registrar to issue a licence, certificate of authorization, temporary licence or limited licence, as the case may be, subject to such terms, conditions or limitations as the Registration Committee specifies.

Extension of time for requiring hearing

(8) The Registration Committee may extend the time for the giving of notice requiring a hearing by an applicant under this section before or after the expiration of such time where it is satisfied that there are apparent grounds for granting relief to the applicant following upon a hearing and that there are reasonable grounds for applying for the extension, and the Registration Committee may give such directions as it considers proper consequent upon the extension.

Parties

(9) The Registrar and the applicant who has required the hearing are parties to proceedings before the Registration Committee under this section.

Opportunity to show compliance

(10) The applicant shall be given a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the issue of the licence, the certificate of authorization, the temporary licence or the limited licence.

Examination of documentary evidence

(11) A party to proceedings under this section shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Members holding hearing not to have taken part in investigation, etc.

(12) Members of the Registration Committee holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the Registration Committee may seek legal advice from an adviser independent from the parties and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Recording of evidence

(13) The oral evidence taken before the Registration Committee at a hearing shall be recorded and, if so required, copies

of a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Only members at hearing to participate in decision

(14) No member of the Registration Committee shall participate in a decision of the Registration Committee following upon a hearing unless he or she was present throughout the hearing and heard the evidence and argument of the parties.

Release of documentary evidence

(15) Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to the person by the Registration Committee within a reasonable time after the matter in issue has been finally determined.

Fiduciary, etc., relationship between corporation and client

20. A corporation that holds a certificate of authorization has the same rights and is subject to the same obligations in respect of fiduciary, confidential and ethical relationships with each client of the corporation that exist at law between a member of the Association and his client.

Registers

21.—(1) The Registrar shall maintain one or more registers in which is entered every person who is licensed under this Act and every holder of a certificate of authorization, temporary licence or limited licence, identifying the terms, conditions and limitations attached to the licence, certificate of authorization, temporary licence or limited licence, and shall note on the register every revocation, suspension and cancellation or termination of a licence, certificate of authorization, temporary licence or limited licence and such other information as the Registration Committee or Discipline Committee directs.

Inspection

(2) Any person has the right, during normal business hours, to inspect the registers maintained by the Registrar.

Copies

(3) The Registrar shall provide to any person, upon payment of a reasonable charge therefor, a copy of any part of the registers mentioned in subsection (1) maintained by the Registrar.

Continuation of memberships

22.—(1) Every person who is a member of the Association immediately before this Act comes into force shall be deemed to be the holder of a licence and is a member of the Association.

Continuation of licences and certificates

(2) Every licence or certificate of authorization issued under the *Professional Engineers Act*, being chapter 394 of the Revised Statutes of Ontario, 1980, or a predecessor thereof, and in effect immediately before this Act comes into force continues in the same manner as if issued as a temporary licence or

a standard certificate of authorization, as the case requires, under this Act.

Cancellation for default of fees

23.—(1) The Registrar may cancel a licence, certificate of authorization, temporary licence or limited licence for non-payment of any fee prescribed by the regulations or the by-laws after giving the member or the holder of the certificate of authorization, temporary licence or limited licence at least two months notice of the default and intention to cancel, subject to the continuing jurisdiction of the Association in respect of any disciplinary action arising out of his professional conduct while a member or holder.

Reinstatement

(2) A person who was a member of the Association or a holder of a certificate of authorization, temporary licence or limited licence whose licence, certificate of authorization, temporary licence or limited licence was cancelled by the Registrar under subsection (1) is entitled to have the licence, certificate of authorization, temporary licence or limited licence reinstated upon compliance with the requirements and qualifications prescribed by the regulations.

Complaints Committee

24.—(1) The Complaints Committee shall be composed of not fewer than three members of the Association appointed to the Committee by the Council, including at least one member of the Council who was appointed to the Council by the Lieutenant Governor in Council.

Idem

(2) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee.

Chairman

(3) The Council shall name one member of the Complaints Committee to be chairman.

Quorum

(4) Three members of the Complaints Committee, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum.

Duties of Complaints Committee

25.—(1) The Complaints Committee shall consider and investigate complaints made by members of the public or members of the Association regarding the conduct or actions of a member of the Association or holder of a certificate of authorization, a temporary licence or a limited licence, but no action shall be taken by the Committee under subsection (2) unless,

(a) a written complaint in a form that shall be provided by the Association has been filed with the Registrar and the member or holder whose conduct or actions are being investigated has been notified of the com-

plaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations the member or holder may wish to make concerning the matter; and

(b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

Idem

(2) The Committee in accordance with the information it receives may,

(a) direct that the matter be referred, in whole or in part, to the Discipline Committee;

(b) direct that the matter not be referred under clause (a); or

(c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Act or the regulations or by-laws.

Decision and reasons

(3) The Committee shall give its decision in writing to the Registrar for the purposes of subsection (4) and, where the decision is made under clause (2) (b), its reasons therefor.

Notice

(4) The Registrar shall send to the complainant and to the person complained against by prepaid first class mail a copy of the written decision made by the Complaints Committee and its reasons therefor, if any, together with notice advising the complainant of his right to apply to the Complaints Review Councillor under section 27.

Complaints Review Councillor

26.—(1) There shall be a Complaints Review Councillor who shall be appointed by and from among the members of the Council appointed by the Lieutenant Governor in Council under clause 3 (2) (c).

Idem

(2) The Complaints Review Councillor is not eligible to be a member of the Complaints Committee or the Fees Mediation Committee.

Examination by Complaints Review Councillor

27.—(1) The Complaints Review Councillor may examine from time to time the procedures for the treatment of complaints by the Association.

Review by Complaints Review Councillor

(2) Where a complaint respecting a member of the Association or a holder of a certificate of authorization, a temporary licence or a limited licence has not been disposed of by the Complaints Committee within ninety days after the complaint

is filed with the Registrar, upon application by the complainant or on his own initiative the Complaints Review Councillor may review the treatment of the complaint by the Complaints Committee.

Application to Complaints Review Councillor

(3) A complainant who is not satisfied with the handling by the Complaints Committee of his complaint to the Committee may apply to the Complaints Review Councillor for a review of the treatment of the complaint after the Committee has disposed of the complaint.

Complaints Review Councillor not to inquire into merit of complaint

(4) In an examination or review in respect of the Association, the Complaints Review Councillor shall not inquire into the merits of any particular complaint made to the Association.

Discretionary power of Complaints Review Councillor

(5) The Complaints Review Councillor in his discretion may decide in a particular case not to make a review or not to continue a review in respect of the Association where,

(a) the review is or would be in respect of the treatment of a complaint that was disposed of by the Association more than twelve months before the matter came to the attention of the Complaints Review Councillor; or

(b) in the opinion of the Complaints Review Councillor,

(i) the application to the Complaints Review Councillor is frivolous or vexatious or is not made in good faith, or

(ii) the person who has made application to the Complaints Review Councillor has not a sufficient personal interest in the subject-matter of the particular complaint.

Notice

(6) Before commencing an examination or review in respect of the Association, the Complaints Review Councillor shall inform the Association of his intention to commence the examination or review.

Office accommodation

(7) The Council shall provide to the Complaints Review Councillor such accommodation and support staff in the offices of the Association as are necessary to the performance of the powers and duties of the Complaints Review Councillor.

Privacy

(8) Every examination or review by the Complaints Review Councillor in respect of the Association shall be conducted in private.

Receipt of information

(9) In conducting an examination or review in respect of the Association, the Complaints Review Councillor may hear or obtain information from any person and may make such inquiries as he thinks fit.

Hearing not required

(10) The Complaints Review Councillor is not required to hold or to afford to any person an opportunity for a hearing in relation to an examination, review or report in respect of the Association.

Duty to furnish information

(11) Every person who is,

(a) a member of the Council;

(b) an officer of the Association;

(c) a member of a committee of the Association; or

(d) an employee of the Association,

shall furnish to the Complaints Review Councillor such information regarding any proceedings or procedures of the Association in respect of the treatment of complaints made to the Association as the Complaints Review Councillor from time to time requires, and shall give the Complaints Review Councillor access to all records, reports, files and other papers and things belonging to or under the control of the Association or any of such persons and that relate to the treatment by the Association of complaints or any particular complaint.

Report by Complaints Review Councillor

(12) The Complaints Review Councillor shall make a report following upon each examination or review by him in respect of the Association.

Report following upon examination

(13) Where the report follows upon an examination of the procedure for the treatment of complaints by the Association, the Complaints Review Councillor shall transmit the report to the Council.

Report following upon review

(14) Where the report follows upon a review of the treatment of a complaint by the Association, the Complaints Review Councillor shall transmit the report to the Council, to the complainant and to the person complained against.

Report to Minister

(15) The Complaints Review Councillor may transmit a report following upon an examination or review to the Minister where, in the opinion of the Complaints Review Councillor, the report should be brought to the attention of the Minister.

Recommendations

(16) The Complaints Review Councillor may include in a report following upon an examination or review his recommendations in respect of the procedures of the Association, either generally or with respect to the treatment of a particular complaint.

Consideration by Council

(17) The Council shall consider each report, and any recommendations included in the report, transmitted to it by the Complaints Review Councillor and shall notify the Complaints Review Councillor of any action it has taken in consequence.

Discipline Committee

28.—(1) The Discipline Committee shall be composed of,

(a) at least one person appointed to the Discipline Committee by the Council from among the members of the Council elected to the Council;

(b) at least one person who is a member of the Association and who is a member of the Council appointed by the Lieutenant Governor in Council; and

(c) the persons appointed to the Committee by the Council from among the members of the Association who have not less than ten years experience in the practice of professional engineering.

Quorum and votes

(2) Five members of the Discipline Committee, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council and one shall be a person elected to the Council, constitute a quorum, and all disciplinary decisions require the vote of a majority of the members of the Discipline Committee present at the meeting.

Disability of member

(3) Where the Discipline Committee commences a hearing and the member or members thereof who are appointed to the Council by the Lieutenant Governor in Council or who are elected members of the Council become unable to continue to act, the remaining members may complete the hearing notwithstanding the absence of the member or members and may render a decision as effectually as if all members of the Discipline Committee were present throughout the hearing, notwithstanding the absence of a quorum of the Committee.

Chairman

(4) The members of the Discipline Committee shall name one of them to be chairman of the Discipline Committee.

Reference by Council or Executive Committee

(5) The Council or the Executive Committee, by resolution, may direct the Discipline Committee to hold a hearing and determine any allegation of professional misconduct or incompetence on the part of a member of the Association or a

holder of a certificate of authorization, a temporary licence or a limited licence specified in the resolution.

Duties of Discipline Committee

29.—(1) The Discipline Committee shall,

(a) when so directed by the Council, the Executive Committee or the Complaints Committee, hear and determine allegations of professional misconduct or incompetence against a member of the Association or a holder of a certificate of authorization, a temporary licence or a limited licence;

(b) hear and determine matters referred to it under section 25, 28 or 38; and

(c) perform such other duties as are assigned to it by the Council.

Professional misconduct

(2) A member of the Association or a holder of a certificate of authorization, a temporary licence or a limited licence may be found guilty of professional misconduct by the Committee if,

(a) the member or holder has been found guilty of an offence relevant to suitability to practise, upon proof of such conviction;

(b) the member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

Incompetence

(3) The Discipline Committee may find a member of the Association or a holder of a temporary licence or a limited licence to be incompetent if in its opinion,

(a) the member or holder has displayed in his professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of the public of a nature or to an extent that demonstrates the member or holder is unfit to carry out the responsibilities of a professional engineer; or

(b) the member or holder is suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member or holder that the member or holder no longer be permitted to engage in the practice of professional engineering or that his practice of professional engineering be restricted.

Powers of Discipline Committee

(4) Where the Discipline Committee finds a member of the Association or a holder of a certificate of authorization, a temporary licence or a limited licence guilty of professional misconduct or incompetence it may, by order,

(a) revoke the licence of the member or the certificate of authorization, temporary licence or limited licence of the holder;

(b) suspend the licence of the member or the certificate of authorization, temporary licence or limited licence of the holder for a stated period, not exceeding twenty-four months;

(c) accept the undertaking of the member or holder to limit the professional work of the member or holder in the practice of professional engineering to the extent specified in the undertaking;

(d) impose terms, conditions or limitations on the licence or certificate of authorization, temporary licence or limited licence, of the member or holder, including but not limited to the successful completion of a particular course or courses of study, as are specified by the Discipline Committee;

(e) impose specific restrictions on the licence or certificate of authorization, temporary licence or limited licence, including but not limited to,

(i) requiring the member or the holder of the certificate of authorization, temporary licence or limited licence to engage in the practice of professional engineering only under the personal supervision and direction of a member,

(ii) requiring the member to not alone engage in the practice of professional engineering,

(iii) requiring the member or the holder of the certificate of authorization, temporary licence or limited licence to accept periodic inspections by the Committee or its delegate of documents and records in the possession or under the control of the member or the holder in connection with the practice of professional engineering,

(iv) requiring the member or the holder of the certificate of authorization, temporary licence or limited licence to report to the Registrar or to

such committee of the Council as the Discipline Committee may specify on such matters in respect of the member's or holder's practice for such period of time, at such times and in such form, as the Discipline Committee may specify;

(f) require that the member or the holder of the certificate of authorization, temporary licence or limited licence be reprimanded, admonished or counselled and, if considered warranted, direct that the fact of the reprimand, admonishment or counselling be recorded on the register for a stated or unlimited period of time;

(g) revoke or suspend for a stated period of time the designation of the member or holder by the Association as a specialist, consulting engineer or otherwise;

(h) impose such fine as the Discipline Committee considers appropriate, to a maximum of $5,000, to be paid by the member of the Association or the holder of the certificate of authorization, temporary licence or limited licence to the Treasurer of Ontario for payment into the Consolidated Revenue Fund;

(i) subject to subsection (5) in respect of orders of revocation or suspension, direct that the finding and the order of the Discipline Committee be published in detail or in summary and either with or without including the name of the member or holder in the official publication of the Association and in such other manner or medium as the Discipline Committee considers appropriate in the particular case;

(j) fix and impose costs to be paid by the member or the holder to the Association;

(k) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms or for such purpose, including but not limited to,

(i) the successful completion by the member or the holder of the temporary licence or the limited licence of a particular course or courses of study,

(ii) the production to the Discipline Committee of evidence satisfactory to it that any physical or

mental handicap in respect of which the penalty was imposed has been overcome,

or any combination of them.

Publication of revocation or suspension

(5) The Discipline Committee shall cause an order of the Committee revoking or suspending a licence or certificate of authorization, temporary licence or limited licence to be published, with or without the reasons therefor, in the official publication of the Association together with the name of the member or holder of the revoked or suspended licence or certificate of authorization, temporary licence or limited licence.

Publication on request

(6) The Discipline Committee shall cause a determination by the Committee that an allegation of professional misconduct or incompetence was unfounded to be published in the official publication of the Association, upon the request of the member of the Association or the holder of the certificate of authorization, temporary licence or limited licence against whom the allegation was made.

Costs

(7) Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the Association reimburse the member of the Association or the holder of the certificate of authorization, temporary licence or limited licence for his costs or such portion thereof as the Discipline Committee fixes.

Stay of decision on appeal, incompetence

30.—(1) Where the Discipline Committee revokes, suspends or restricts a licence, temporary licence or limited licence on the grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision, unless the court to which the appeal is taken otherwise orders, and, where the court is satisfied that it is appropriate in the circumstances, the court may so order.

Stay of decision on appeal, professional misconduct

(2) Where the Discipline Committee revokes, suspends or restricts a licence or a certificate of authorization, temporary licence or limited licence on grounds other than for incompetence, the order does not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned, unless the Discipline Committee otherwise orders, and, where the Committee considers that it is appropriate for the protection of the public, the Committee may so order.

Discipline proceedings, parties

31.—(1) In proceedings before the Discipline Committee, the Association and the member of the Association or the holder of a certificate of authorization, a temporary licence or

a limited licence whose conduct is being investigated in the proceedings are parties to the proceedings.

Examination of documentary evidence

(2) A member or holder of a certificate of authorization, a temporary licence or a limited licence whose conduct is being investigated in proceedings before the Discipline Committee shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Members holding hearing not to have taken part in investigation, etc.

(3) Members of the Discipline Committee holding a hearing shall not have taken part before the hearing in any investigation of the subject-matter of the hearing other than as a member of the Council considering the referral of the matter to the Discipline Committee or at a previous hearing of the Committee, and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the Committee may seek legal advice from an adviser independent from the parties and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

In camera R.S.O. 1980, c. 484

(4) Notwithstanding anything in the *Statutory Powers Procedure Act*, hearings of the Discipline Committee shall be held *in camera*, but, if the party whose conduct is being investigated requests otherwise by a notice delivered to the Registrar before the day fixed for the hearing, the committee shall conduct the hearing in public except where,

(a) matters involving public security may be disclosed; or

(b) the possible disclosure of intimate financial or personal matters of a person other than the person whose conduct is being investigated outweighs the desirability of holding the hearing in public.

Recording of evidence

(5) The oral evidence taken before the Discipline Committee shall be recorded and, if so required, copies of a transcript thereof shall be furnished only to the parties upon the same terms as in the Supreme Court.

Evidence R.S.O.1980, c. 484

(6) Notwithstanding the *Statutory Powers Procedure Act*, nothing is admissible in evidence before the Discipline Committee that would be inadmissible in a court in a civil case and the findings of the Discipline Committee shall be based exclusively on evidence admitted before it.

Only members at hearing to participate in decision

(7) No member of the Discipline Committee shall participate in a decision of the Committee following upon a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties.

Release of documentary evidence

(8) Documents and things put in evidence at a hearing of the Discipline Committee shall, upon the request of the party who produced them, be returned by the Committee within a reasonable time after the matter in issue has been finally determined.

Continuation of expiry of Committee membership

(9) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated, other than for cause, before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his term of office had not expired or been terminated.

Service of decision of Discipline Committee

(10) Where the Discipline Committee finds a member of the Association or a holder of a certificate of authorization, temporary licence or limited licence guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member or holder.

Appeal to court

32.—(1) A party to proceedings before the Registration Committee or the Discipline Committee may appeal to the Divisional Court, in accordance with the rules of court, from the decision or order of the committee.

Certified copy of record

(2) Upon the request of a party desiring to appeal to the Divisional Court and upon payment of the fee therefor, the Registrar shall furnish the party with a certified copy of the record of the proceedings, including the documents received in evidence and the decision or order appealed from.

Powers of court on appeal

(3) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the committee appealed from and may exercise all powers of the committee and may direct the committee to take any action which the committee may take and as the court considers proper, and for such purposes the court may substitute its opinion for that of the committee or the court may refer the matter back to the committee for rehearing, in whole or in part, in accordance with such directions as the court considers proper.

Fees Mediation Committee

33.—(1) No person who is a member of the Complaints Committee or the Discipline Committee shall be a member of the Fees Mediation Committee.

Duties of Fees Mediation Committee

(2) The Fees Mediation Committee,

(a) shall hear and mediate any written complaint by a client of a member of the Association or of a holder of a certificate of authorization, a temporary licence or limited licence in respect of a fee charged for professional engineering services provided to the client; and

(b) shall perform such other duties as are assigned to it by the Council.

Arbitration by Fees Mediation Committee

(3) The Fees Mediation Committee, with the written consent of all parties to the dispute, may arbitrate a dispute in respect of a fee between a client and a member of the Association or a holder of a certificate of authorization, temporary licence or limited licence and in that case the decision of the Fees Mediation Committee is final and binding on all parties to the dispute.

Application of R.S.O.1980, c. 25

(4) Where the Fees Mediation Committee acts as arbitrator under subsection (3), the *Arbitrations Act* does not apply.

Enforcement

(5) A decision by the Fees Mediation Committee under subsection (3), exclusive of the reasons therefor, certified by the Registrar, may be filed with the Supreme Court or a county or district court and when filed the decision may be enforced in the same manner as a judgment of the court.

Registrar's investigation

34.—(1) Where the Registrar believes on reasonable and probable grounds that a member of the Association or a holder of a certificate of authorization, a temporary licence or limited licence has committed an act of professional misconduct or incompetence or that there is cause to refuse to issue or to suspend or revoke a certificate of authorization, the Registrar by order may appoint one or more persons to make an investigation to ascertain whether such act has occurred or there is such cause, and the person or persons appointed shall report the result of the investigation to the Registrar.

Powers of investigator

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member or holder of the certificate of authorization, temporary licence or limited licence in respect of whom the investigation is being made and may, upon production of his appointment,

enter at any reasonable time the business premises of the member or holder and examine books, records, documents and things relevant to the subject-matter of the investigation and, for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of the *Public Inquiries Act,* which Part applies to such inquiry as if it were an inquiry under that Act.

R.S.O. 1980, c. 411

Obstruction of investigator

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

Order by provincial judge

(4) Where a provincial judge is satisfied on evidence upon oath,

(a) that the Registrar by order has appointed one or more persons to make an investigation; and

(b) that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the member of the Association or holder of a certificate of authorization, a temporary licence or a limited licence whose affairs are being investigated and to the subject-matter of the investigation,

the provincial judge may issue an order authorizing the person or persons making the investigation, together with such police officer or officers as they call upon to assist them, to enter and search, by force if necessary, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them.

Execution of order

(5) An order issued under subsection (4) shall be executed at reasonable times as specified in the order.

Expiry of order

(6) An order issued under subsection (4) shall state the date on which it expires, which shall be a date not later than fifteen days after the order is issued.

Ex parte application

(7) A provincial judge may receive and consider an application for an order under subsection (4) without notice to and in the absence of the member of the Association or holder of a certificate of authorization, temporary licence or a limited licence whose affairs are being investigated.

Removal of books, etc.

(8) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under this section relating

to the member or holder whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member or holder whose practice is being investigated.

Admissibility of copies

(9) Any copy made as provided in subsection (8) and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as proof in the absence of evidence to the contrary of the original book, record or document and its contents.

Report of Registrar

(10) The Registrar shall report the results of the investigation to the Council or such committee as the Registrar considers appropriate.

Liability insurance

35. It is a condition of every certificate of authorization that the holder of the certificate shall not offer or provide to the public services that are within the practice of professional engineering unless the holder is insured in respect of professional liability in accordance with the regulations.

Interpretation

36.—(1) In this section, "insurer" means a person offering insurance in respect of liability incurred in the practice of professional engineering.

Information re insurance claims

(2) Upon the request of the Registrar, an insurer shall furnish to the Registrar any information that is in the possession of the insurer and that is specified in the request related to a claim or claims for indemnity in respect of the practice of professional engineering.

Exception

(3) Subsection (2) does not apply in relation to medical information in respect of a person unless the person or, in the case of a minor, a parent or other person who has lawful custody of the minor consents to the furnishing of the information.

Transmittal of information

(4) The Registrar may forward any information referred to in subsection (2) to the Council or to such committee as the Registrar considers appropriate.

Surrender of revoked licence or certificate

37. Where a licence, certificate of authorization, temporary licence or limited licence is revoked or cancelled, the former holder thereof shall forthwith deliver the licence, certificate of authorization, temporary licence or limited licence and related seal to the Registrar.

Application for licence, etc., after revocation

38.—(1) A person whose licence, certificate of authorization, temporary licence or limited licence has been revoked for cause under this Act, or whose membership has been cancelled for cause under a predecessor of this Act, may apply in writing to the Registrar for the issuance of a licence, certificate of authorization, temporary licence or limited licence, but such application shall not be made sooner than two years after the revocation.

Removal of suspension

(2) A person whose licence, certificate of authorization, temporary licence or limited licence has been suspended for cause under this Act, or whose membership has been suspended for cause under a predecessor of this Act, may apply in writing to the Registrar for the removal of the suspension, but, where the suspension is for more than one year, the application shall not be made sooner than one year after the commencement of the suspension.

Reference to Discipline Committee

(3) The Registrar shall refer an application under subsection (1) or (2) in respect of a licence or a certificate of authorization, a temporary licence or a limited licence to the Discipline Committee which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and the applicant.

Procedures

(4) The provisions of this Act applying to hearings by the Registration Committee, except section 32, apply with necessary modifications to proceedings of the Discipline Committee or the Registration Committee under this section.

Confidentiality

39.—(1) Every person engaged in the administration of this Act, including any person making an examination or review under section 27 or an investigation under section 34, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, examination, review or investigation and shall not communicate any such matters to any other person except,

(a) as may be required in connection with the administration of,

(i) this Act and the regulations and by-laws, or

1983, c...

(ii) the *Architects Act, 1983* and the regulations and by-laws under that Act,

or any proceedings under,

(iii) this Act or the regulations, or

(iv) the *Architects Act, 1983* or the regulations under that Act; 1983, c...

(b) to his counsel; or

(c) with the consent of the person to whom the information relates.

Testimony in civil action

(2) No person to whom subsection (1) applies shall be required to give testimony or to produce any book, record, document or thing in any action or proceeding with regard to information obtained by him in the course of his duties, employment, examination, review or investigation except in a proceeding under this Act or the regulations or by-laws or a proceeding under the *Architects Act, 1983* or the regulations or by-laws under that Act.

Order directing compliance

40.—(1) Where it appears to the Association that any person does not comply with any provision of this Act or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the Association may apply to a judge of the High Court for an order directing the person to comply with the provision, and upon the application the judge may make the order or such other order as the judge thinks fit.

Appeal

(2) An appeal lies to the Court of Appeal from an order made under subsection (1).

Penalties

41.—(1) Every person who contravenes section 12 is guilty of an offence and on conviction is liable for the first offence to a fine of not more than $15,000 and for each subsequent offence to a fine of not more than $30,000.

Idem, use of term "professional engineer", etc.

(2) Every person who is not a holder of a licence or a temporary licence and who,

(a) uses the title "professional engineer" or a variation thereof as an occupational or business designation;

(b) uses an occupational or business designation, term, title or description that will lead to the belief that the person is authorized to engage in the practice of professional engineering; or

(c) uses a seal that will lead to the belief that the person is a professional engineer,

is guilty of an offence and on conviction is liable for the first offence to a fine of not more than $5,000 and for each subsequent offence to a fine of not more than $15,000.

Idem, services of professional engineer

(3) Every person who is not a holder of a certificate of authorization and who uses an occupational or business designation that will lead to the belief that the person is authorized to provide services that are within the practice of professional engineering is guilty of an offence and on conviction is liable for the first offence to a fine of not more than $5,000 and for each subsequent offence to a fine of not more than $15,000.

Idem

(4) Any person who obstructs a person appointed to make an investigation under section 34 in the course of his or her duties is guilty of an offence and on conviction is liable to a fine of not more than $5,000.

Idem, director or officer of corporation

(5) Where a corporation is guilty of an offence under subsection (1), (2), (3) or (4), every director or officer of the corporation who authorizes, permits or acquiesces in the offence is guilty of an offence and on conviction is liable to a fine of not more than $30,000.

Limitation

(6) Proceedings shall not be commenced in respect of an offence under subsection (1), (2), (3), (4) or (5) after two years after the date on which the offence was, or is alleged to have been, committed.

Falsification of documents

42.—(1) Any person who makes or causes to be made a wilful falsification in a matter relating to a register or issues a false licence, certificate, temporary licence, limited licence or document with respect to registration is guilty of an offence and on conviction is liable to a fine of not more than $5,000.

Offences for false representation

(2) Any person who wilfully procures or attempts to procure himself or herself to be licensed or to be issued a certificate of authorization, a temporary licence or a limited licence under this Act by knowingly making a false representation or declaration or by making a fraudulent representation or declaration, either orally or in writing, is guilty of an offence and on conviction is liable to a fine of not more than $5,000, and every person knowingly aiding and assisting such person therein is guilty of an offence and on conviction is liable to a fine of not more than $5,000.

Limitation period

(3) Proceedings to obtain a conviction for an offence under subsection (1) or (2) shall not be commenced after the expiration of six months after the date on which the offence was, or is alleged to have been, committed.

Onus of proof respecting licensing

43. Where licensing or the holding of a certificate of authorization, a temporary licence or a limited licence under this Act is required to permit the lawful doing of an act or thing, if in any prosecution it is proven that the defendant has done the act or thing, the burden of proving that he was so licensed or that he held a subsisting certificate of authorization, temporary licence or limited licence under this Act rests upon the defendant.

Service of notice or document

44.—(1) A notice or document under this Act or the regulations is sufficiently given, served or delivered if delivered personally or by mail.

Idem

(2) Where a notice or document under this Act or the regulations is sent to a person by mail addressed to the person at the last address of the person in the records of the Association, there is a rebuttable presumption that the notice or document is delivered to the person on the tenth day after the day of mailing.

Registrar's certificate as evidence

45. Any statement containing information from the records required to be kept by the Registrar under this Act, purporting to be certified by the Registrar under the seal of the Association, is admissible in evidence in all courts as proof in the absence of evidence to the contrary of the facts stated therein without proof of the appointment or signature of the Registrar and without proof of the seal.

Immunity of Association

46.—(1) No action or other proceeding for damages shall be instituted against the Association, a committee of the Association or a member of the Association or committee of the Association, or an officer, employee, agent or appointee of the Association for any act done in good faith in the performance or intended performance of a duty or in the exercise or the intended exercise of a power under this Act, a regulation or a by-law, or for any neglect or default in the performance or exercise in good faith of such duty or power.

Councillor indemnified in suits respecting execution of his office

(2) Every member of the Council, a committee of the Association and every officer and employee of the Association, and his heirs, executors and administrators, and estate and effects, respectively, may, with the consent of the Association, given by the members of the Association, from time to time and at all times, be indemnified and saved harmless out of the funds of the Association, from and against,

(a) all costs, charges and expenses whatsoever that he sustains or incurs in or about any action, suit or proceeding that is brought, commenced or prosecuted against him, for or in respect of any act, deed, matter

or thing whatsoever, made, done or permitted by him, in or about the execution of the duties of his office; and

(b) all other costs, charges and expenses that he sustains or incurs in or about or in relation to the affairs thereof, except such costs, charges or expenses as are occasioned by his own wilful neglect or default.

Limitation of action

47.—(1) Proceedings shall not be commenced against a member of the Association or a holder of a certificate of authorization, a temporary licence or a limited licence for damages arising from a service in the practice of professional engineering after twelve months after the date on which the service was, or ought to have been, performed.

Extension of time

(2) The court in which an action mentioned in subsection (1) has been or may be brought may extend the limitation period specified in subsection (1) before or after the expiration of the period if the court is satisfied that there are apparent grounds for the proceedings and that there are reasonable grounds for applying for the extension.

Application

(3) Subsections (1) and (2) do not apply to proceedings under any other section of this Act.

Joint Practice Board

48.—(1) The Council shall appoint to the Joint Practice Board (composed of a chairman, three members representing the Ontario Association of Architects and three members representing the Association of Professional Engineers of Ontario) the three members of the Joint Practice Board representing the Association and shall prescribe the term of each appointment.

Recommendation

(2) The Joint Practice Board may recommend to the Council that the Council direct the Registrar to issue a licence or a certificate of authorization to a holder of a certificate of practice issued under the *Architects Act, 1983*.

1983, c....

Direction by Council

(3) The Council, upon the recommendation of the Joint Practice Board, may direct the Registrar to issue a licence or a certificate of authorization to a holder of a certificate of practice under the Architects Act, 1983.

Referral of dispute to Joint Practice Board

(4) Where a dispute arises between an architect and a professional engineer as to jurisdiction in respect of professional services, the Registrar may refer the matter to the Joint Practice Board and the Joint Practice Board shall consider the matter and assist the architect and the professional engineer to resolve the dispute in accordance with the rules in section 12.

(5) Proceedings shall not be commenced under this Act in respect of a matter mentioned in subsection (4) except upon the certificate of the chairman of the Joint Practice Board that the Board has considered the matter and has been unable to resolve the dispute. Commencement of proceedings

(6) The certificate of the chairman is admissible in evidence in all courts as proof in the absence of evidence to the contrary of the facts stated therein without proof of the appointment or signature of the chairman. Certificate

49.—(1) The Council shall make a report annually to the Minister containing such information as the Minister requires. Annual report

(2) The Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. Idem

50.—(1) The *Corporations Act* does not apply in respect of the Association except for the following sections of that Act which shall apply with necessary modifications in respect of the Association: Application of R.S.O. 1980, c. 95

1. Section 81 (which relates to liability for wages).

2. Section 94 (which relates to auditors) and, for the purpose, the Minister shall be deemed to be the Minister referred to in the section.

3. Subsection 95 (1) (which relates to the auditor's qualifications) and, for the purpose, the subsection shall be deemed not to include,

    i. the exception as provided in subsection 95 (2); and

    ii. the reference to an affiliated company.

4. Section 96 (which relates to the auditor's functions).

5. Subsection 97 (1), exclusive of clause 97 (1) (b), (which relates to the auditor's report) and, for the purpose, the Association shall be deemed to be a private company.

6. Subsection 97 (3) (which relates to the auditor's report).

7. Section 122 (which relates to the liability of members).

8. Section 276 (which relates to the holding of land) and, for the purpose, the Minister shall be deemed to be the Minister referred to in the section.

9. Section 280 (which relates to making contracts).

10. Section 281 (which relates to power of attorney).

11. Section 282 (which relates to authentication of documents) except in respect of information from the records required to be kept by the Registrar.

12. Section 292 (which relates to validity of acts of directors).

13. Section 297 (which relates to directions by a court as to holding a meeting).

14. Section 299 (which relates to minutes of meetings).

15. Section 302 (which relates to books of account).

16. Section 303 (which relates to untrue entries) and, for the purpose, the section shall be deemed not to refer to section 41 of that Act.

17. Section 304 (which relates to the place of keeping and the inspection of records) and, for the purpose,

    i. the section shall be deemed not to refer to sections 41 and 43 of that Act; and

    ii. the Minister shall be deemed to be the Minister referred to in the section.

18. Section 305 (which relates to inspection of records) and, for the purpose, the section shall be deemed not to refer to section 41 of that Act.

19. Section 310 (which relates to investigations and audits).

20. Section 323 (which relates to evidence of by-laws and certificates of amounts due).

21. Section 329 (which relates to removal of proceedings into the Supreme Court).

22. Section 330 (which relates to appeals).

23. Section 331 (which relates to untrue statements) and, for the purpose,

    i. the section shall be deemed not to refer to regulations made under that Act; and

    ii. the Minister and the Deputy Minister to the Minister shall be deemed to be the Minister and the Deputy Minister referred to in the section.

24. Section 333 (which relates to orders by the court) and, for the purpose, the section shall be deemed not to refer to creditors.

Interpretation

(2) For the purposes of subsection (1), a member of the Association shall be deemed to be a shareholder.

Repeal

51.—(1) The *Professional Engineers Act*, being chapter 394 of the Revised Statutes of Ontario, 1980, is repealed.

References R.S.O.1980, c. 394

(2) Any reference in any Act or regulation to the *Professional Engineers Act* shall be deemed to be a reference to this Act.

Idem

(3) Any reference in any Act or regulation to a professional engineer as a member of the Association under the *Professional Engineers Act* shall be deemed to be a reference to a professional engineer licensed under this Act.

Commencement

52. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

53. The short title of this Act is the *Professional Engineers Act, 1983*.

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Bill 124 **Government Bill**

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

LIBRARY
APR 23

Bill 124

An Act to amend the Wages Act

The Hon. R. McMurtry
Attorney General

1st Reading November 18th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTES

SECTION 1. Section 7 of the Act is rewritten to make it consistent with current civil procedure. The percentage of wages that is exempt from seizure or garnishment (unless the court orders otherwise) is increased from 70 to 80 per cent of the amount remaining after compulsory deductions.

Where a creditor seeks to enforce an order for support or maintenance, the exempt portion is, instead, 50 per cent of net wages (unless the court orders otherwise). This special provision is intended to replace section 30 of the *Family Law Reform Act,* which will be repealed by the *Courts of Justice Act, 1983.*

References to "attachment" are dropped and the newer concept of "garnishment" is used instead.

SECTION 2. Section 8 of the Act relates to relief from garnishment on terms and will be replaced by provisions for continuing garnishment in the new Rules of Civil Procedure. Section 9 is obsolete. Both are repealed.

Bill 124 1983

An Act to amend the Wages Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Section 7 of the *Wages Act*, being chapter 526 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor: s. 7, re-enacted

7.—(1) For the purposes of this section, "wages" does not include an amount that an employer is required by law to deduct from wages. Net wages subject to garnishment

(2) Subject to subsection (3), 80 per cent of a person's wages are exempt from seizure or garnishment. Exemption from seizure or garnishment

(3) Fifty per cent of a person's wages are exempt from seizure or garnishment in the enforcement of an order for support or maintenance enforceable in Ontario. Idem, support or maintenance

(4) A judge of the court in which a writ of execution or notice of garnishment enforceable against a person's wages is issued may, on motion by the creditor on notice to the person, order that the exemption set out in subsection (2) or (3) be decreased, if the judge is satisfied that it is just to do so, having regard to the nature of the debt owed to the creditor, the person's financial circumstances and any other matter the judge considers relevant. Judge may decrease exemption

(5) A judge of the court in which a writ of execution or notice of garnishment enforceable against a person's wages is issued may, on motion by the person on notice to the creditor, order that the exemption set out in subsection (2) or (3) be increased, if the judge is satisfied that it is just to do so, having regard to the person's financial circumstances and any other matter the judge considers relevant. Judge may increase exemption

(6) Where an employer receives notice of a motion under subsection (4) or (5), the employer may pay into court the part of the person's wages that is not exempt from seizure or gar- Employer may pay into court

nishment under subsection (2) or (3), as the case may be, and the judge on the hearing of the motion may make such order for payment out of court as is just.

Wage assignments

(7) Subject to subsection (8), an assignment of wages or any part of them to secure payment of a debt is invalid.

Idem, credit unions R.S.O.1980, c. 102

(8) A person may assign to a credit union to which the *Credit Unions and Caisses Populaires Act* applies the part of the person's wages that does not exceed the part that may be seized or garnished under this section.

Application of s. 7 (2, 3)

(2) Subsections 7 (2) and (3) of the said Act, as re-enacted by subsection (1), apply where a seizure of wages under a writ of execution is made by the sheriff or bailiff, or a notice of garnishment is served on an employer, on or after the day this section comes into force.

ss. 8, 9, repealed

2. Sections 8 and 9 of the said Act are repealed.

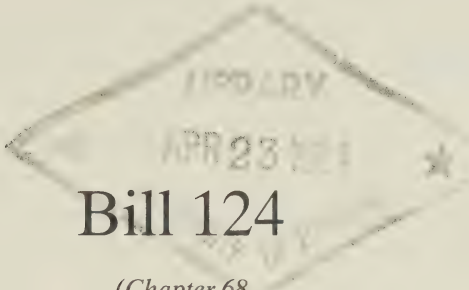
Commencement

3. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

4. The short title of this Act is the *Wages Amendment Act, 1983*.

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983



Bill 124

(Chapter 68
Statutes of Ontario, 1983)

An Act to amend the Wages Act

The Hon. R. McMurtry
Attorney General

1st Reading	November 18th, 1983
2nd Reading	November 29th, 1983
3rd Reading	December 1st, 1983
Royal Assent	December 2nd, 1983

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

Bill 124 1983

An Act to amend the Wages Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Section 7 of the *Wages Act*, being chapter 526 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor: s. 7, re-enacted

7.—(1) For the purposes of this section, "wages" does not include an amount that an employer is required by law to deduct from wages. Net wages subject to garnishment

(2) Subject to subsection (3), 80 per cent of a person's wages are exempt from seizure or garnishment. Exemption from seizure or garnishment

(3) Fifty per cent of a person's wages are exempt from seizure or garnishment in the enforcement of an order for support or maintenance enforceable in Ontario. Idem, support or maintenance

(4) A judge of the court in which a writ of execution or notice of garnishment enforceable against a person's wages is issued may, on motion by the creditor on notice to the person, order that the exemption set out in subsection (2) or (3) be decreased, if the judge is satisfied that it is just to do so, having regard to the nature of the debt owed to the creditor, the person's financial circumstances and any other matter the judge considers relevant. Judge may decrease exemption

(5) A judge of the court in which a writ of execution or notice of garnishment enforceable against a person's wages is issued may, on motion by the person on notice to the creditor, order that the exemption set out in subsection (2) or (3) be increased, if the judge is satisfied that it is just to do so, having regard to the person's financial circumstances and any other matter the judge considers relevant. Judge may increase exemption

(6) Where an employer receives notice of a motion under subsection (4) or (5), the employer may pay into court the part of the person's wages that is not exempt from seizure or gar- Employer may pay into court

nishment under subsection (2) or (3), as the case may be, and the judge on the hearing of the motion may make such order for payment out of court as is just.

Wage assignments

(7) Subject to subsection (8), an assignment of wages or any part of them to secure payment of a debt is invalid.

Idem, credit unions R.S.O.1980, c. 102

(8) A person may assign to a credit union to which the *Credit Unions and Caisses Populaires Act* applies the part of the person's wages that does not exceed the part that may be seized or garnished under this section.

Application of s. 7 (2, 3)

(2) Subsections 7 (2) and (3) of the said Act, as re-enacted by subsection (1), apply where a seizure of wages under a writ of execution is made by the sheriff or bailiff, or a notice of garnishment is served on an employer, on or after the day this section comes into force.

ss. 8, 9, repealed

2. Sections 8 and 9 of the said Act are repealed.

Commencement

3. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

4. The short title of this Act is the *Wages Amendment Act, 1983*.

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

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APR 23

Bill 125

An Act to provide for a Public Advocate in Ontario

Mr. Swart

1st Reading November 18th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTE

The purpose of the Bill is to provide for a Public Advocate in Ontario. The function of the Public Advocate is to represent the public interest in Ontario at rate hearings before tribunals and commissions. The Public Advocate is also provided with the authority to intervene in hearings at which environmental matters are considered where, in the opinion of the Public Advocate, a broad general interest may be affected as a result of the hearing. The Bill provides for the Public Advocate to be appointed by the Lieutenant Governor in Council on the address of the Legislative Assembly of Ontario, and the Public Advocate is required to report annually on the affairs of his office to the Speaker. The Bill also provides authority for the Lieutenant Governor in Council to fix a levy to be paid by corporations that make application for a rate increase for the purpose of paying the expenses incurred by the Public Advocate in carrying out his functions and duties.

Bill 125 1983

An Act to provide for a Public Advocate in Ontario

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Interpretation
R.S.O. 1980, c. 140

1. In this Act, "environment" has the same meaning as in the *Environmental Assessment Act*.

Consumer advocate

2. There shall be appointed, as an officer of the Legislature, a Public Advocate, to exercise the powers and perform the duties prescribed by this Act.

Appointment

3. The Public Advocate shall be appointed by the Lieutenant Governor in Council on the address of the Assembly.

Term of office

4.—(1) Subject to this Act, the Public Advocate shall hold office for a term of five years, but is removable at any time for cause by the Lieutenant Governor in Council on the address of the Assembly.

Reappointment and retirement

(2) The Public Advocate may be reappointed for a further term or terms, but shall retire upon attaining the age of sixty-five years.

Nature of employment

5. The Public Advocate shall devote himself exclusively to the duties of his office and shall not hold any other office under the Crown or engage in any other employment.

Salary

6. The Public Advocate may be paid a salary to be fixed by the Lieutenant Governor in Council.

Staff

7. Subject to the approval of the Lieutenant Governor in Council, the Public Advocate may employ such officers and other employees as the Public Advocate considers necessary for the efficient operation of his office and may determine their salary, remuneration and terms and conditions of employment.

Annual report

8. The Public Advocate shall report annually upon the affairs of his office to the Speaker of the Assembly who shall cause the report to be laid before the Assembly if it is in session or, if not, at the next ensuing session.

Function: rate hearings

9.—(1) The function of the Public Advocate is to represent the public interest in hearings before and appeals from any tribunal or commission empowered to set or review a rate, toll, fare or charge for a product or service provided to the public.

Function: environmental hearings

(2) Where a hearing before a tribunal or commission concerns an enterprise, activity or proposal that, in the opinion of the Public Advocate, affects a broad public interest in the environment, the Public Advocate may intervene in the hearing to represent the broad public interest.

Standing

(3) The Public Advocate shall be accorded standing as an intervenor and party at any hearing referred to in subsections (1) and (2) notwithstanding any provision of any Act, regulation, rule of procedure or other rule of law that would deny standing to the Public Advocate before the tribunal or commission.

Considerations

(4) In determining whether or not to represent the public interest in a proceeding under subsection (1) or (2), the Public Advocate shall consider the importance and extent of the public interest involved and whether that interest would be adequately represented without the action of the Public Advocate and, if the Public Advocate determines that there are inconsistent public interests involved in a particular matter, the Public Advocate may choose to represent one such interest based on the foregoing considerations.

Guidance rules

10. The Assembly may make general rules for the guidance of the Public Advocate in the exercise of his functions under this Act.

Levy

11. The Lieutenant Governor in Council may, by regulation, fix a levy that shall be specifically assessed upon any corporation that makes application to a tribunal or commission for approval or review of a rate increase for the purpose of paying the expenses incurred by the Public Advocate in carrying out his functions and duties under this Act but the amount of the levy shall not in any year exceed one-tenth of one per cent of the corporation's gross revenue in its most recently completed financial year.

Commencement

12. This Act comes into force on the day it receives Royal Assent.

13. The short title of this Act is the *Public Advocate Act, 1983*. Short title

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

LIBRARY APR 23

Bill 126

An Act to require the Payment of Interest on Consumers' Utility Deposits

Mr. Mackenzie

1st Reading November 21st, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTE

The Bill would require suppliers of gas, electric power and telephone services to pay interest at the Bank of Canada prime rate on consumers' deposits.

Bill 126 1983

An Act to require the Payment of Interest on Consumers' Utility Deposits

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Interpretation

1. In this Act,

(a) "consumer" means an individual who purchases gas, electric power or telephone services for personal or family use and not in the course of carrying on business;

(b) "gas" has the same meaning as in the *Ontario Energy Board Act*; R.S.O. 1980, c. 332

(c) "prime rate" means the lowest rate of interest quoted by chartered banks to the most credit-worthy borrowers for prime business loans, as determined and published by the Bank of Canada in the periodic publication entitled the Bank of Canada Review.

Interest on deposits

2.—(1) Where a person requires a deposit from a consumer as a condition of providing the consumer with gas, electric power or telephone services, the person shall pay the consumer interest on the deposit in accordance with subsection (2).

Idem

(2) Interest required under subsection (1) shall be paid quarterly and shall be calculated monthly at the prime rate existing for that month.

Commencement

3. This Act comes into force on the day it receives Royal Assent.

Short title

4. The short title of this Act is the *Utility Deposits Interest Act, 1983*.

Bill 127



An Act to amend the Employment Standards Act

Mr. Martel

1st Reading November 22nd, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTE

The purpose of the Bill is to prohibit an employer from requiring an employee to work more than five consecutive days without a day of rest.

Bill 127 1983

An Act to amend the Employment Standards Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Employment Standards Act*, being chapter 137 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section: s. 22a, enacted

22a. Notwithstanding anything in this Part, an employer shall not require an employee to perform work on more than five consecutive days without a day of rest. Maximum consecutive days of work

2. This Act comes into force on the day it receives Royal Assent. Commencement

3. The short title of this Act is the *Employment Standards Amendment Act, 1983*. Short title

Bill 128 **Government Bill**

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

LIBRARY APR 23 1984

Bill 128

An Act to amend the Residential Complexes Financing Costs Restraint Act, 1982

The Hon. R. G. Elgie
Minister of Consumer and Commercial Relations

1st Reading November 24th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTE

The Bill extends the operation of the *Residential Complexes Financing Costs Restraint Act, 1982* for a period of one year, that is, from the 31st day of December, 1983 to the 31st day of December, 1984.

Bill 128 **1983**

An Act to amend the Residential Complexes Financing Costs Restraint Act, 1982

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

s. 7 (1), re-enacted

1.—(1) Subsection 7 (1) of the *Residential Complexes Financing Costs Restraint Act, 1982*, being chapter 59, is repealed and the following substituted therefor:

Repeal

(1) This Act is repealed on the 31st day of December, 1984.

s. 7 (2), amended

(2) Subsection 7 (2) of the said Act is amended by striking out "1983" in the fourth line and inserting in lieu thereof "1984".

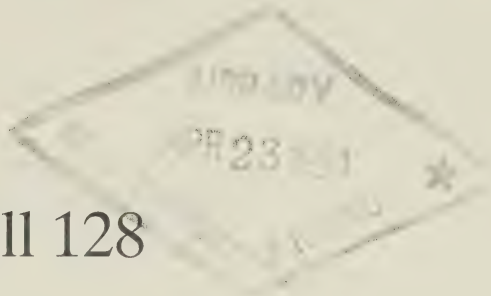
Commencement

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is the *Residential Complexes Financing Costs Restraint Amendment Act, 1983*.

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983



Bill 128

(Chapter 69
Statutes of Ontario, 1983)

An Act to amend the Residential Complexes Financing Costs Restraint Act, 1982

The Hon. R. G. Elgie
Minister of Consumer and Commercial Relations

1st Reading	November 24th, 1983
2nd Reading	November 29th, 1983
3rd Reading	December 1st, 1983
Royal Assent	December 2nd, 1983

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

Bill 128 **1983**

An Act to amend the Residential Complexes Financing Costs Restraint Act, 1982

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

s. 7 (1), re-enacted

1.—(1) Subsection 7 (1) of the *Residential Complexes Financing Costs Restraint Act, 1982*, being chapter 59, is repealed and the following substituted therefor:

Repeal

(1) This Act is repealed on the 31st day of December, 1984.

s. 7 (2), amended

(2) Subsection 7 (2) of the said Act is amended by striking out "1983" in the fourth line and inserting in lieu thereof "1984".

Commencement

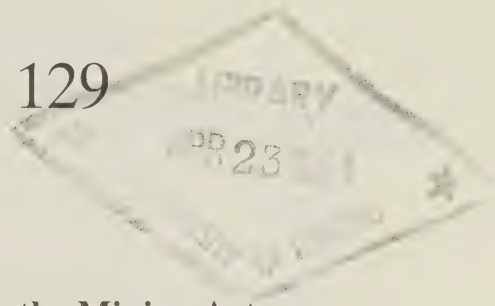
2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is the *Residential Complexes Financing Costs Restraint Amendment Act, 1983*.

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

Bill 129



An Act to revise the Mining Act

The Hon. A. W. Pope
Minister of Natural Resources

1st Reading November 24th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTES

The purpose of the Bill is to simplify, modernize and standardize the regulation of mineral exploration and development. Many of the changes are of an administrative nature and some of the detail contained in the current Act will be dealt with in the new regulations.

The major significant changes are as follows:

1. Provision is made for a lifetime prospector's licence with the elimination of annual renewals.
2. Perimeter staking of a block of claims is permitted to reduce cost of staking.
3. Assessment work requirements are expressed in terms of dollars spent rather than days worked.
4. Persons doing exploratory work are required to furnish notice to owners of surface rights of intention to perform assessment work.
5. Annual work summaries will be available to the industry to eliminate duplicating exploratory work.
6. The option of continuing assessment work rather than applying for a lease is provided.
7. Mining recorders are given authority to extend time to perform assessment work.
8. Numerous administrative and procedural changes are made to provide better notice to persons interested in recorded information.

Bill 129 1983

An Act to revise the Mining Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act, Interpretation

1. "anniversary date" means the date that occurs at annual intervals after,

   i. the date of recording a mining claim or such other date as indicated under this Act, or

   ii. the date of commencement of the term of an exploratory licence of occupation;

2. "Commissioner" means the Mining and Lands Commissioner;

3. "Crown" means the Crown in right of Ontario;

4. "Crown land" means land, the mining rights of which are held by the Crown, but does not include,

   i. land in the actual use or occupation of the Crown, the Crown in right of Canada or of a department of the Government of Canada or a ministry of the Government of Ontario,

   ii. land granted by the Crown under any Act where mining rights have not been reserved to the Crown, or

   iii. land withdrawn, set apart or appropriated for a public purpose;

5. "Director" means the Director of the Land Management Branch of the Ministry;

6. "district manager" means the manager of an administrative district of the Ministry;

7. "file" means the receipt at the recording office of any document required or permitted to be submitted to a recorder under this Act and "filed" and "filing" have corresponding meanings;

8. "holder", when referring to the holder of a mining claim that is not subject to a lease or patent issued under this Act or a quarry permit issued under this Act, means the holder of record or a person acquiring an interest by a recorded transfer;

9. "in place", when used in reference to mineral, means in the place or position where originally formed in the solid rock, as distinguished from being in loose, fragmentary or broken rock, boulders, float, beds or deposits of gold or platinum-bearing sand, earth, clay, or gravel, or placer;

10. "inspector" means an employee of the Ministry who is designated in writing by the Minister as an inspector for the purposes of this Act;

11. "lease" means a leasehold patent;

12. "licensee" means a person holding a prospector's licence, an exploratory licence of occupation or a licence of occupation issued under this Act;

13. "mine", when used as a noun, includes,

    i. any opening or excavation in or working of the ground, for the purpose of winning, opening up or proving any mineral or mineral-bearing substance,

    ii. any ore body, mineral deposit, stratum or place where mining is or may be carried on,

    iii. all ways, works, machinery, plant, buildings and premises below or above ground belonging to or used in connection with a mine,

    iv. any excavation or opening of the ground made for the purpose of searching for or removal of minerals, rock or stratum, and

v. any roasting or smelting furnace, concentrator, mill, work or place used for or in connection with washing, crushing, sifting, reducing, leaching, roasting, smelting, refining, treating or research on any substances,

but does not include a quarry;

14. "mine", when used as a verb, and "mining" include any mode or method of working whereby earth, rock, stratum, stone or mineral-bearing substance may be disturbed, removed, washed, sifted, leached, roasted, smelted, refined, crushed or dealt with for the purpose of obtaining any mineral therefrom, whether it has been previously disturbed or not, but does not include the operation of a quarry;

15. "minerals" means all naturally occurring metallic and non-metallic minerals including natural gas, oil, coal, gold, silver and all rare, precious metals but does not include salt or quarry material;

16. "mining claim" means a parcel of land, including land under water, that has been staked in accordance with this Act and the regulations;

17. "mining land" means,

i. land of which the mining rights have been staked and recorded as a mining claim or land of which the surface rights or the mining rights or mining rights and surface rights have been patented or leased under or by authority of a statute, regulation, or order in council for use for mining purposes, and

ii. land used or intended to be used for mining purposes;

18. "mining rights" means any right, title or interest in minerals granted under this Act on or under any land where they are dealt with separately from the surface;

19. "Minister" means the Minister of Natural Resources;

20. "Ministry" means the Ministry of Natural Resources;

21. "patent" means a freehold or leasehold grant from the Crown made under the Great Seal;

22. "peat" means vegetable matter decomposed in water and partly carbonized to such an extent that it may be used as fuel;

23. "prescribed" means prescribed by the regulations;

24. "prospecting" means the investigating and searching for minerals on Crown land;

25. "quarry" means a place from which quarry material may be, is being or has been removed by surface or underground excavation;

26. "quarry material" includes quarried stone or rock, shale, dolomite, sand and gravel, overburden, limestone, marble, granite, quartz, feldspar, fluorspar, gypsum, diatomaceous earth, clay, marl, peat, top soil and any other material prescribed that is the property of the Crown;

27. "recorder" means the mining recorder of the mining division in which is situate the mining lands and Crown lands in respect of which an action, matter or thing may be done;

28. "recording office" means the office of the recorder maintained for the filing and recording of applications and documents affecting mining claims in a mining division;

29. "regulations" means the regulations made under this Act;

30. "Supervisor" means the Supervisor of the Mining Lands Section of the Land Management Branch of the Ministry;

31. "surface rights" means every right in land other than mining rights;

32. "Surveyor General" means the Surveyor General appointed under the *Ministry of Natural Resources Act*;

R.S.O. 1980, c. 285

33. "tag" means a metal tag issued by the Ministry;

34. "Treasurer" means the Treasurer of Ontario and Minister of Economics;

35. "valuable mineral in place" means a vein, lode or deposit of mineral in place evaluated at the time of discovery to be of such a nature and containing such kind and quantity of mineral in place, other than limestone, marl, clay, marble, peat or building stone, that the vein, lode or deposit has the potential of being or becoming a profitable producing mine. R.S.O. 1980,c. 268, s. 1, *amended*.

PART I

ADMINISTRATION

Administration by Minister

2. The Minister is responsible for the administration of this Act. R.S.O. 1980, c. 268, s. 4, *amended*.

Mining division

3. The Minister may divide the Province of Ontario into mining divisions and may alter the number, limits or extent thereof. R.S.O. 1980, c. 268, s. 14, *amended*.

Appointment of recorder

4.—(1) The Lieutenant Governor in Council may appoint an employee of the Ministry as a recorder for each mining division.

Appointment of acting recorders

(2) Where a recorder is absent because of illness or for any other reason, the Minister may appoint, in writing, an employee of the Ministry to act as recorder on a temporary basis and that person shall exercise all of the duties of the recorder except those duties specifically restricted in the appointment. R.S.O. 1980, c. 268, s. 6 (1, 2), *amended*.

Recording office

5.—(1) Each mining division shall have a recording office and the recorder shall keep, in the recording office, records of mining claims recorded in the mining division and documents filed in respect thereof.

Certain documents filed in recording office

(2) Except where otherwise provided, the recording office is the proper office for filing and recording all documents required or permitted to be filed under this Act.

Certain documents filed in Director's office

(3) The office of the Director is the proper office for depositing all documents required or permitted to be deposited under this Act affecting,

(a) any licence of occupation or exploratory licence of occupation;

(b) any right, privilege or interest that may be acquired under this Act concerning a licence of occupation or exploratory licence of occupation; or

R.S.O. 1980, cc. 230, 445

(c) any grant under this Act that is not a grant registerable under the *Land Titles Act* or the *Registry Act* or any right, privilege or interest that may be acquired under this Act in respect of such grant.

Provision of records, etc.

(4) Upon request and receiving payment of the prescribed fee, a recorder shall,

(a) provide for inspection any record of a mining claim kept in that recording office and any filed document relating thereto;

(b) supply a copy of any record of a mining claim and a copy of the whole or part of any document filed in the recording office; and

(c) certify any copy provided under clause (b).

Maps to be kept

(5) Every recorder shall keep in the recording office,

(a) a map showing the territory included in the mining division; and

(b) township or area maps.

Idem

(6) Every recorder shall indicate on the maps referred to in clause (5) (b) the Crown land that is open for staking, all restrictions that affect staking and all mining claims as they are recorded.

Provision of maps

(7) Upon request, the recorder shall provide for inspection any map mentioned in subsection (5). R.S.O. 1980, c. 268, s. 15, *amended*.

Inspector

6.—(1) The Minister may designate, in writing, any employee of the Crown as an inspector for the purposes of this Act.

Idem

(2) For the purpose of subsection (1),

(a) the Director, the Supervisor and every employee of the Ministry who is a mining claim inspector, recorder, acting recorder, geologist or mineral resources co-ordinator; and

(b) every district mining engineer of the Ministry of Labour,

shall be deemed to have been designated under subsection (1).

Powers of inspector

(3) An inspector for the purpose of carrying out his duties under this Act and the regulations,

(a) may, subject to subsections (4) and (5), enter in or on any premises at any time without warrant;

(b) may require the production of any licence, permit, record, report or survey and may inspect and make copies of anything produced;

(c) may examine land, including patented land, and may remove representative surface samples of mineral and ore sufficient for the purpose of testing or analysis; and

(d) alone or, in conjunction with other persons possessing special or expert knowledge, may make such examinations or tests as he considers necessary to ascertain whether this Act and the regulations are being complied with and, for such purpose, take or remove any material or substance subject to the owner, lessee or holder being notified in writing.

No entry into core storage areas without consent

(4) No inspector shall enter any locked building being used for the storage of diamond drill core except with the consent of the holder, lessee or owner of the mining claim.

No entry into dwelling

(5) No inspector shall enter any room or place actually being used as a dwelling where the occupier refuses entry. *New*.

Commissioners for affidavits

7. Every recorder, mining claim inspector, Director and Supervisor is *ex officio* a commissioner for taking affidavits in Ontario. R.S.O. 1980, c. 268, s. 13, *amended*.

Employees of Ministry prohibited from staking, etc.

8.—(1) No employee of the Ministry who is a mining recorder, acting mining recorder, mining claim inspector, geologist or mineral resources co-ordinator shall directly or indirectly, by himself or by any other person, stake a mining claim or acquire any right, title or interest in an unpatented mining claim.

Staking, etc., void

(2) Every staking or interest, right or title acquired by a person in contravention of subsection (1) is void.

Exemption

(3) Subsection (1) does not apply to a person who stakes a mining claim or acquires a right, title or interest with the express permission of the Minister.

Employee may hold licence

(4) Subsection (1) shall not be construed so as to prohibit an employee of the Ministry from holding a prospector's licence but the holding of the licence does not exempt the holder from the application of subsection (1). R.S.O. 1980, c. 268, s. 12, *amended*.

Evidence of records or documents

9. Every copy of a record mentioned in section 5, a document filed in a recording office or a document filed under subsection 5 (3), certified to be a true copy by the person in whose custody the record or document is placed shall be received in any court as *prima facie* proof of the record or document and its contents without proof of the signature or official position of the person making the certificate. R.S.O. 1980, c. 268, s. 9, *amended*.

Time periods defined

10. All time periods set out in relation to an action taken or to be taken shall be construed in terms of clear days. *New*.

PROSPECTOR'S LICENCE

Licence required

11.—(1) No person who is not the holder of a prospector's licence shall prospect for minerals on Crown land, stake or record a mining claim or acquire any right or interest therein. R.S.O. 1980, c. 268, s. 18 (1).

One licence

(2) No person may hold more than one prospector's licence.

Licence not transferable

(3) A prospector's licence is not transferable.

Age restriction

(4) No individual under the age of eighteen years may hold a prospector's licence.

Lifetime licence

(5) Unless cancelled under this Act, a prospector's licence is valid for the life of the person to whom it is issued.

Application for licence-individual

(6) An application by an individual for a prospector's licence or replacement thereof shall be made to a recorder in the prescribed form accompanied by the prescribed fee.

Application for licence-corporation

(7) An application by a company for a prospector's licence or replacement thereof shall be made to the Minister in the prescribed form accompanied by the prescribed fee. R.S.O. 1980, c. 268, s. 19, *amended*.

Cancellation of licence

12.—(1) Where the recorder finds, after a hearing, that the holder of a prospector's licence has contravened any of the

provisions of this Act or the regulations, he may, by order and upon notifying the holder of the licence, cancel the licence.

Reapplication

(2) Where a recorder makes an order cancelling a licence under subsection (1), he may designate, in the order, any period he considers appropriate during which the holder of the licence being cancelled is barred from reapplying for a licence.

Time to divest

(3) Every order made under subsection (1) shall set out a time during which the holder of the cancelled licence shall divest himself of every right, title or interest he has in any mining claims.

When in effect

(4) An order made under subsection (1) is effective as of the date of the order and remains effective unless the Commissioner orders otherwise.

Idem

(5) Where a licence has been cancelled and a time is set for the holder to divest himself of any right, title or interest in existing claims, any existing claims held by the licensee solely and not transferred by that time shall be open for staking at 9 o'clock of the morning of the day following the expiry of the time. R.S.O. 1980, c. 268, s. 27, *amended*.

PART II

MINING RIGHTS ACQUISITION

MINING CLAIMS

Lands Eligible for Prospecting, Staking, and Recording

Prospecting

13.—(1) Any Crown land may be prospected for minerals except where,

(a) the mining rights have been withdrawn from prospecting under section 16;

(b) there is a subsisting mining claim;

(c) the land is in an Indian reserve;

R.S.O. 1980, c. 401

(d) the land has been set aside under the *Provincial Parks Act*; or

1922, c. 24

(e) the mining rights are held by the Crown under *The Canada Company's Lands Act, 1922*.

Exception

(2) Clause (1) (b) does not apply to the person who staked the mining claim until the time the claim is recorded or to the holder of the mining claim.

Idem

R.S.O. 1980, c. 401

(3) Clause (1) (c) does not apply to prospecting under the regulations made under the *Provincial Parks Act*. *New*.

Staking

14.—(1) Any Crown land may be staked for minerals except where,

(a) the mining rights have been withdrawn from staking under section 16;

(b) a *bona fide* application is pending in the Ministry and the pending disposition may include the mining rights applied for;

(c) the surface rights have been subdivided, surveyed, sold or otherwise disposed of by the Minister for summer resort purposes;

(d) the land has been set aside under the *Provincial Parks Act*;

1922, c. 24

(e) the mining rights are held by the Crown under *The Canada Company's Lands Act, 1922*;

(f) the Minister, the Minister of Energy or the Minister of Transportation and Communications certifies that the land is required for the development of water power or for a highway or some other purpose in the public interest and the Minister is satisfied that the mining rights do not constitute valuable mineral in place;

(g) the land is in an Indian reserve; or

(h) proceedings under this Act in respect thereof are pending before the Supreme Court, the Commissioner or a recorder.

Exception

(2) Notwithstanding clause (1) (c), a mining claim encompassing land, the surface rights of which have been subdivided, surveyed, sold or otherwise disposed of by the Minister for summer resort purposes, may be recorded subject to a reservation of the surface and mining rights of the land.

Idem

(3) Clause (1) (d) does not apply to land staked under the regulations made under the *Provincial Parks Act*.

(4) Clause (1) (g) does not apply to land staked in accordance with *The Indian Lands Act, 1924*. R.S.O. 1980, c. 268, s. 30, *amended*. Idem 1924, c. 15

(5) The Minister may designate land as suitable for disposition for agricultural purposes. Agricultural land designated

(6) No person who stakes a mining claim on land designated under subsection (5) obtains thereby any right, title or interest in or to the surface rights to the land. Mining claims on agricultural lands

(7) Where surface rights on any land designated under subsection (5) are necessary to the carrying on of mining operations, the Minister may determine the part of the surface rights so required and may sell to the claim holder the surface rights or such part thereof as he considers essential to the efficient carrying on of mining operations. Where surface rights necessary for mining operations

(8) A sale under subsection (7) may be subject to such condition precedent or subsequent as the Minister considers proper. R.S.O. 1980, c. 268, s. 41, *amended*. Conditions for sale

(9) No person may prospect for minerals or stake a mining claim on land to which he does not have surface rights if the land, Lands used or occupied as gardens, etc.

(a) is used as a garden, orchard, vineyard, nursery, plantation or pleasure ground;

(b) bears crops that may be damaged by prospecting; or

(c) has situated thereon a spring, artificial reservoir, dam, waterworks, dwelling house, outhouse, manufactory, public building, church or cemetery,

except with the consent of the owner, lessee, licensee or permittee of the surface rights or by order of the recorder or the Commissioner.

(10) An order under subsection (9) may be subject to such terms as the recorder or Commissioner considers proper. Order

(11) If there is a dispute as to land that is exempt from prospecting or staking out under subsection (9), the recorder or the Commissioner shall determine the extent of the land that is exempt. R.S.O. 1980, c. 268, s. 33, *amended*. Disputes as to lands exempt

RIGHT OF ACCESS

15. Except as otherwise provided in this Act, Prospecting, staking and performing work

(a) any holder of a prospector's licence may enter on land, the mining rights of which are held by the Crown, and prospect for minerals and stake a mining claim; and

(b) any recorded holder of a mining claim may enter on the claim and explore for minerals and perform the work required by this Act to maintain it. R.S.O. 1980, c. 268, s. 28, *amended*.

WITHDRAWAL OF MINING RIGHTS

Withdrawal and reopening of mining rights

16.—(1) The Minister may by order,

(a) withdraw from prospecting, staking or disposition by sale, lease, licence of occupation or exploratory licence of occupation, any land, mining rights or surface rights that are the property of the Crown; and

(b) reopen for prospecting, staking or disposition by sale, lease, licence of occupation or exploratory licence of occupation, any land, mining rights or surface rights that have been withdrawn under this Act or a predecessor thereof.

Mining rights withdrawn not to be prospected, staked, etc.

(2) Mining rights withdrawn under this section shall remain withdrawn until reopened by the Minister and shall not be,

(a) prospected, staked or recorded; or

(b) occupied and worked for mining purposes except where quarry material is required for public purposes.

Order not a regulation R.S.O. 1980, c. 446

(3) An order under subsection (1) is not a regulation within the meaning of the *Regulations Act*. R.S.O. 1980, c. 268, s. 36, *amended*.

STAKING MINING CLAIMS

Size and form of a mining claim

17.—(1) A mining claim may be staked by an individual only and its size and form shall be as prescribed.

Claim may be reduced

(2) Where a mining claim exceeds the area prescribed, the area of the claim may be reduced by the recorder in accordance with the regulations.

Staking on any day

(3) A mining claim may be staked on any day in accordance with the regulations.

(4) During the staking of a mining claim or a group of contiguous claims, the licensee is to be present within the boundaries of the claim or claims and shall ensure that the staking is conducted in accordance with this Act and the regulations. Licensee to be present on ground

(5) Any person may erect posts, blaze lines, inscribe tags or posts or perform any other manual, clerical or other required services on behalf of the licensee and such person is not required to hold a prospector's licence. No licence required for assistance in staking

(6) Tags and duplicate tags shall be provided by the Ministry at the prescribed fee. Tags

(7) A tag may be used once only. Idem

(8) An unused set of tags may be transferred. Idem

(9) The licensee or any person on his behalf shall, at the time of staking, affix in the prescribed manner, the respective tag of a set of tags, at each corner of a mining claim. Tagging at the time of staking

(10) At the time of staking, if tags are not available, a licensee shall mark on the post the prescribed information and within six months after the date of recording, affix in the prescribed manner, the tags assigned by the recorder. *New*. Tags not available

18.—(1) A mining claim staked in a restricted travel zone under the *Forest Fires Prevention Act* shall not be recorded unless the licensee satisfies the recorder that he entered the fire district before it was declared to be a restricted travel zone or did so under the authority of a travel permit. R.S.O. 1980, c. 268, s. 49, *amended*. Staking in restricted areas R.S.O. 1980, c. 173

(2) The Minister may designate by regulation areas that are environmentally sensitive and prospecting, staking and work requirements therein shall be as prescribed. *New*. Controlled staking in designated areas

19.—(1) Except as authorized by this Act, any person who, Forfeiture of right to further staking

(a) does any staking;

(b) erects or places any stake, post or marking upon any land open to staking; or

(c) causes any act referred to in clause (a) or (b) to be done,

and fails to file the staking with the recorder within the prescribed time is not entitled to again stake the land or any part

thereof or to record a claim thereon unless he satisfies the recorder, by affidavit, that he acted in good faith and not for an improper purpose.

Failure not an abandonment

(2) Failure to record a staked claim under subsection (1) is not an abandonment under section 50. R.S.O. 1980, c. 268, s. 48, *amended*.

Substantial compliance

20. Substantial compliance, as nearly as circumstances will reasonably permit, with the requirements of this Act and the regulations as to the staking of a mining claim is sufficient. R.S.O. 1980, c. 268, s. 50.

Recorder may order alterations

21. Where the recorder is satisfied that there is substantial compliance with the provisions of this Act and the regulations, he may make an order directing a holder,

(a) to move, remove or alter posts and tags and the writing or inscribing thereon;

(b) to move or alter claim lines in accordance with the regulations;

(c) to affix tags that have not been affixed at the time of staking;

(d) to replace tags, affixed at the time of staking, that have since been removed or destroyed;

(e) to erect or replace missing posts and to affix tags to such posts,

and the recorder shall set out in the order the time within which the work shall be completed and reported to him. R.S.O. 1980, c. 268, s. 131 (6), *amended*.

APPLICATION TO RECORD

Time for filing application

22.—(1) An application to record the staking of a mining claim shall not be accepted unless it is filed, in the prescribed form, in the recording office within thirty-one days after the day on which staking was started.

Requirements with application

(2) An application under subsection (1) must be accompanied by,

(a) a sketch or plan of the mining claim showing the corner posts, the witness posts, the line identification posts, if any, and such other information as is prescribed in the regulations; and

(b) the prescribed fee. R.S.O. 1980, c. 268, s. 51 (1), *amended*.

Common posts

(3) Where common posts have been used in staking a group of two or more contiguous claims, the sketch or plan referred to in subsection (2) must indicate which posts are common posts. *New*.

Improper description of area

(4) Where it appears that there has been an attempt made, in good faith, to comply with this Act and the regulations, the inclusion of more or less than the prescribed area in a mining claim or the failure of the licensee to describe or set out in the application, sketch or plan filed in the recording office the actual area or parcel of land the mining rights of which were staked does not invalidate the claim. R.S.O. 1980, c. 268, s. 51 (5).

Mining claim number

(5) The letters designating the mining division in which the mining claim is situate assigned by the recorder at the time of recording and the number of the set of prescribed tags affixed at each corner post of the claim shall be the number of the mining claim. *New*.

Re-identification of boundary lines

23. The holder of a mining claim shall re-identify the boundary lines of the claim, in accordance with the regulations, at ten year intervals following the anniversary of the recording of the claim and shall give the recorder an affidavit to that effect on or before the end of each ten year interval. *New*.

Mining claim recorded in another division by error

24.—(1) If by error a mining claim is recorded in a mining division other than that in which the mining rights are situate, the error does not affect the holder's interest in the mining rights and the recorder, upon discovering or being notified of the error, shall forthwith transfer the records of the mining claim to the appropriate recorder who shall record the claim in the division in which it is situate by assigning the appropriate letters designating the correct mining division and indicating on the new record the date of the former record and date of rectification. R.S.O. 1980, c. 268, s. 53, *amended*.

Claim in more than one division

(2) Where a mining claim or a group of contiguous mining claims is situated in more than one mining division the claim or group of claims shall be recorded in the recording office of the division in which most of the claim or group of claims lie and all subsequent documents related to the claim shall be filed and recorded in that recording office. *New*.

Recording with conditions

25.—(1) No mining claim shall be recorded for land transferred to or vested in the Ontario Northland Transportation Commission without the consent of the Commission.

Idem

(2) No mining claim in respect of mining rights only shall be recorded, except with the consent of the Minister, on,

(a) any land reserved or set apart as a town site by the Crown; or

(b) any land laid out into town or village lots on a registered plan by the owner thereof.

Idem

(3) An application to record the staking of a mining claim on land mentioned in subsection (1) or (2) may be filed with the recorder pending the consent of the Commission or the Minister. *New*.

What to be recorded and date of recording

26.—(1) The recorder shall forthwith record the particulars of every application to record the staking of a mining claim that he considers to be in accordance with this Act and the regulations and, unless a prior application is already recorded and subsisting for the same or for a substantial part of the same mining rights, he shall file the application, sketch or plan with the records of his office and the date of the recording of the claim shall be the day that the application is recorded.

Priority of recording

(2) The recorder shall use the time of receipt of the application to record to establish priority for recording.

Pending recording applications

(3) Where an application to record a mining claim is presented and the recorder considers that the staking was not in accordance with this Act or the regulations, he shall not record the application but shall, on the request of the licensee so applying or at his discretion and upon receiving the prescribed fee, file the application and decide any question as to whether the application shall be recorded.

Filing applications only

(4) Where an application to record a mining claim is presented that includes mining rights of which all or a substantial part of are included in a recorded mining claim, the recorder shall not record the claim but shall, on the request of the applicant and upon payment of the prescribed fee, file the application.

Idem

(5) An application filed under subsection (4) shall be accompanied by a dispute in accordance with subsection 27 (1). R.S.O. 1980, c. 268, s. 54, *amended*.

DISPUTE

Dispute

27.—(1) A dispute in the prescribed form, verified by affidavit, may be filed with the recorder by a licensee who has filed an application under subsection 26 (4) and who alleges that a recorded mining claim or group of claims is illegal or invalid in whole or in part.

Who may file dispute

(2) No person may file a dispute unless he,

(a) holds a prospector's licence;

(b) has staked some part of the land in respect of which the dispute arises; and

(c) has filed an application in respect of some part of the mining claim under section 26.

Recording of disputes

(3) Upon payment of the prescribed fee and the filing of the dispute and affidavit, the recorder shall record it forthwith on the record of the disputed mining claim or group of claims.

Copy to be sent to holder

(4) The recorder shall serve a copy of the dispute on the holders of the disputed mining claim or group of claims.

No dispute to be filed

(5) No dispute shall be filed against a mining claim where a certificate of record thereof has been granted.

Idem

(6) No dispute shall be filed against a mining claim where,

(a) the validity of the claim as to the manner and method of staking has been adjudicated by the recorder or the Commissioner; or

(b) a prior dispute has been filed against it and that dispute has not been finally adjudicated. R.S.O. 1980, c. 268, s. 56, *amended*.

CERTIFICATE OF RECORD

Certificate of record

28. Where a mining claim is on record and,

(a) it is not subject to an unresolved dispute;

(b) the recorder is satisfied that the requirements of this Act and the regulations with respect to the staking of the claim have been met; and

(c) the prescribed fee is paid,

the recorder shall issue a certificate of record in the prescribed form. R.S.O. 1980, c. 268, s. 57 (1), *amended*.

Certificate conclusive evidence

29.—(1) A certificate of record is final and conclusive evidence with respect to the staking of a mining claim. R.S.O. 1980, c. 268, s. 58, *amended*.

Cancelling certificate of record

(2) Notwithstanding subsection (1), where a certificate of record has been issued by administrative error, the Commissioner may cancel it on the application of the Director.

Proceedings pending

(3) On receipt of an application for a certificate of record, the recorder shall indicate on the record of the mining claim that proceedings are pending. R.S.O. 1980, c. 268, s. 59, *amended*.

RIGHTS OF A MINING CLAIM HOLDER OR LICENSEE

Rights in claim

30.—(1) The act of,

(a) staking;

(b) filing of an application for; or

(c) recording of,

a mining claim does not confer upon the prospector or recorded holder any right, title or interest in or to the mining claim other than the right to proceed as provided in this Act to obtain a patent from the Crown.

Licence

(2) Before the issue of a certificate of record, a recorded holder is a mere licensee of the Crown.

Tenant at will

(3) After the issue of the certificate of record and until he obtains a patent, a recorded holder is a tenant at will of the Crown in respect of the mining claim.

No removal of minerals or materials prior to lease

(4) The staking of a claim or the filing of an application for or the recording of a mining claim does not confer upon the recorded holder any right to take, remove or otherwise dispose of any minerals, quarry material or any other material found in, on or under the mining claim.

Exception

(5) Notwithstanding subsection (4), a recorded holder may, with the consent of the Minister, remove minerals for testing purposes.

Reservations

(6) Peat, sand and gravel, oil and natural gas, salt and quarry material located on an unpatented mining claim are

reserved to the Crown unless the reservation is waived by the Minister.

Right to use and occupy surface rights

(7) The holder of a mining claim does not have any right to the surface rights of the claim other than the right to enter on, use and occupy such parts thereof as are necessary for the purpose of prospecting and the efficient exploration, development and operation of the mines, minerals and mining rights therein.

Taxation

(8) The holder of an unpatented mining claim is not liable to assessment or taxation for municipal or school purposes in respect of the claim.

Idem

(9) The holder of a licence of occupation, exploratory licence of occupation or quarry permit issued under this Act or a predecessor thereof is not liable to assessment or taxation for municipal or school purposes in respect of the licence or permit except for improvements for which he would be liable to assessment or taxation if the land were held under a patent. R.S.O. 1980, c. 268, s. 60, *amended*.

Crown reservation adjacent to water

(10) Where a claim includes land covered with or bordering on water, there may be reserved for the Crown the surface rights not exceeding 130 metres in width from the high water mark. R.S.O. 1980, s. 268, s. 43 (4).

Crown reservation adjacent to roads

(11) Where a claim is traversed by a highway or road constructed or maintained by the Ministry of Transportation and Communications, there may be reserved for the Crown the surface rights not exceeding ninety-five metres in width along both sides of the highway or road, such reservation to be measured from the outside limits of the right of way of the highway or road. R.S.O. 1980, c. 268, s. 43 (5).

Reservations apply to unpatented mining claims

(12) The reservation of surface rights authorized by subsections (10) and (11) shall be deemed to apply to and to have been made on all unpatented mining claims unless such reservation or reservations are waived by the Minister. R.S.O. 1980, c. 268, s. 43 (6).

Surface rights on mining claim

31.—(1) Except as otherwise provided in this Act, the holder of a mining claim has the right to use the surface rights for prospecting and the efficient exploration, development and operation of the mines, minerals and mining rights in priority to any interest therein granted subsequently.

Disposition of surface rights

(2) Where the holder of a mining claim releases his prior right to use the surface rights, the recorder shall make an entry on the record of the claim of the release and thereupon the sur-

face rights may be dealt with as provided in any Act or as required by the Ministry.

Survey of surface rights

(3) Where the holder of a mining claim releases his right under subsection (2), the Minister may require a survey of the surface rights, the cost of the survey being at the expense of the person who has acquired the surface rights.

Where holder does not consent to disposition of surface rights

(4) Where an application is made for the use of the surface rights that have not been reserved or excluded under any Act on a mining claim and the holder of the claim does not consent to the proposed use, the Minister may refer the application to the Commissioner.

Where application referred to Commissioner

(5) Where an application under subsection (4) is referred to the Commissioner, he shall, upon giving all interested persons at least ninety days notice and after hearing such interested persons as appear, make an order based on the merits of the application.

Where surface rights required for public use

(6) Where surface rights on a mining claim are required for the use of the Crown or other public use, this section applies with necessary modifications. R.S.O. 1980, c. 268, s. 61, *amended*.

ADDRESS FOR SERVICE

Address required

32.—(1) Every application, dispute and transfer filed under this Act shall have endorsed thereon the residence and post office address of the person filing or, if that person is not resident in Ontario, the name, residence and post office address of a person resident in Ontario upon whom service may be made.

Substitution

(2) A name and address referred to in subsection (1) may be substituted with the name and address of another person resident in Ontario by notifying the proper recorder of the substitution.

Service

(3) Any service under this Act or the regulations is sufficiently made if delivered or sent by prepaid mail to the person and address given under subsection (1) or (2).

Idem

(4) Where service is made by prepaid mail under subsection (3), it shall be deemed to have been made on the fifth day after the day of mailing. R.S.O. 1980, c. 268, s. 67, *amended*.

TRUSTS

Trusts

33.—(1) A notice or instrument of an express, implied or constructive trust, relating to an unpatented mining claim shall not be recorded.

Describing holder as trustee, etc., effect of

(2) Describing the holder of a mining claim as a trustee, whether the beneficiary or object of the trust is or is not mentioned, does not constitute notice of a trust and does not impose on any person dealing with the holder the duty to enquire as to the power of the holder in respect of the mining claim but, subject to the recording of a certificate of interest, the holder may deal with the mining claim as if the description had not been inserted.

Liability of trustees

(3) Nothing in this section relieves the holder of the mining claim who is a trustee thereof or of any part or share thereof or interest therein from liability as between him and any person for whom he is a trustee and no provision in this Act shall be construed so as to relieve the holder from any personal liability or obligation. R.S.O. 1980, c. 268, s. 68, *amended*.

Valid interest in staked claims

34.—(1) No person is entitled to enforce a right or interest, contracted for or acquired before the staking, to, in or under a staking or recording of a mining claim done by another person unless the right or interest is evidenced by writing, signed by the holder of the mining claim or by the licensee for whom the staking or recording was done, or is corroborated by material evidence.

Where R.S.O. 1980, c. 481, does not apply

(2) Where a right or interest is evidenced as required by subsection (1), the *Statute of Frauds* does not apply. R.S.O. 1980, c. 268, s. 69 (1), *amended*.

RECORDING DOCUMENTS

Recording of documents

35.—(1) Except as otherwise provided in this Act or the regulations, no instrument affecting a recorded right or interest acquired under this Act shall be recorded unless it is signed and attested as prescribed by the regulations. R.S.O. 1980, c. 268, s. 71, *amended*.

Where corporate seal

(2) Where an instrument executed by a corporation has the corporate seal stamped thereon, the affidavit referred to in subsection (1) is not required.

Form of transfer

(3) A transfer of an unpatented mining claim shall be in the prescribed form. R.S.O. 1980, c. 268, s. 70, *amended*.

Priority of interest

36. After a right or interest acquired under this Act has been recorded, every instrument, other than a will, affecting the right or interest is void as against a transferee for consideration without notice unless the instrument is recorded before the recording of the instrument under which the transferee claims. R.S.O. 1980, c. 268, s. 72.

Recording constitutes notice

37. The recording of an instrument under this Act constitutes notice of the instrument notwithstanding any defect in the requirements for recording but it is the duty of the recorder not to record except upon determining the requirements of this Act have been met. R.S.O. 1980, c. 268, s. 73, *amended*.

Priority

38.—(1) Priority of recording prevails.

Transfer, etc., deemed to be recorded when filed in recording office

(2) Except as provided in subsection 26 (1), if all requirements for recording have been met, every recordable instrument shall be deemed to have been recorded at the time that it was filed in the recording office.

Postmark prevails

(3) Where a document or fee that is required to be filed with or paid to the recorder on or before a day determined in accordance with this Act or the regulations is sent by mail and received in the recording office after the day, the recorder may, where there is no adverse interest, accept the document or fee upon evidence that it was mailed on or before the day. R.S.O. 1980, c. 268, s. 74, *amended*.

Recording writs of execution

39.—(1) A copy of a writ of execution certified by the sheriff of the county or district or a bailiff of a small claims court to be a true copy of a writ in his hands may be filed in the recording office and the recorder, upon receiving the prescribed fee and being given the number or description of a mining claim of which the execution debtor is the recorded holder or in which he has a recorded interest, shall record the writ on the record of the claim.

Effect of recording

(2) A writ of execution, upon being recorded under subsection (1), binds all rights or interests of the execution debtor in the appropriate mining claim and authorizes the sheriff or bailiff to sell and realize upon the rights or interests in the same way as with goods sold and realized upon under a writ of execution.

Transfer

(3) A transfer under subsection (2) from a sheriff or bailiff to a purchaser may be recorded in the same manner and with the same effect as a transfer from the execution debtor.

(4) After the recording of a writ of execution, the sheriff, bailiff or the execution creditor may do anything that the execution debtor could do to keep the mining claim, right or interest in, or restore it to, good standing and is entitled to add the necessary expense thereof to the execution debt. Keeping mining claim in good standing after recording of execution

(5) A writ of execution may be discharged by recording a certificate from the sheriff or bailiff that the mining rights are no longer bound by the writ, by recording a release from the execution creditor or by filing an order of the Commissioner directing its removal. R.S.O. 1980, c. 268, s. 75, *amended*. Discharge of execution

ASSESSMENT WORK

40.—(1) No person shall start ground assessment work on Crown land before that land is recorded as a mining claim. No assessment work prior to recording

(2) Subsection (1) does not apply to prohibit prospecting. *New*. Exception

41.—(1) Before the holder of a mining claim starts ground assessment work under this Act, he shall give thirty days notice, in writing, to the surface rights holder and legal occupant, if any, of his intention to perform the work. Surface rights holder to be notified

(2) The holder of a mining claim shall provide evidence, satisfactory to the recorder, that there has been compliance with the requirement of subsection (1) and in default thereof the recorder shall not record the assessment work. Evidence of notice

(3) Notwithstanding subsection (2), where the holder of a mining claim can satisfy the recorder that he has made every reasonable attempt to comply with subsection (1), the recorder may, at his discretion, record the assessment work. *New*. Idem

42.—(1) Where a mining claim is situated in an area designated by the Minister under subsection 18 (2), the holder shall, before starting any ground assessment work, obtain the consent of the district manager to the nature, extent and location of the proposed work. Controlled work in designated areas

(2) The holder of a mining claim shall provide evidence, satisfactory to the recorder, that he has obtained the consent required under subsection (1) and, in default thereof, the recorder shall not record the assessment work. *New*. Idem

43.—(1) The holder of a mining claim shall, during the five year period immediately following the recording of the mining claim, perform assessment work as prescribed. Assessment work

Geophysical and geochemical work

(2) Prospecting and airborne geophysical and geochemical work done on Crown land before the recording of the mining claim is eligible for assessment work credit as prescribed.

Idem

(3) For the purposes of subsection (1), assessment work credits shall be in terms of dollars spent and the holder shall provide receipts to verify expenditures claimed.

Time for reporting assessment work

(4) The holder of a mining claim shall, not later than the anniversary date, file in the recording office a report in the prescribed form as to the assessment work done for the purpose of complying with subsections (1) and (2).

Idem

(5) Where an extension of the time for performing assessment work has been granted under section 46, the report of its performance shall be filed within the extended time.

Date of recording of assessment work

(6) The date of recording assessment of work under subsection (4) or (5) shall be the day of filing the report of work form in the recording office.

Assessment work north of 52nd parallel

(7) Where a mining claim is in an area north of the fifty-second parallel of latitude, the holder may perform the assessment work prescribed for each of the first and second year periods at any time prior to the second anniversary date of the recording of the mining claim.

Work report north of 52nd parallel

(8) Where assessment work is performed in accordance with subsection (7), the report referred to in subsection (4) shall be filed in the recording office not later than the second anniversary date of the recording of the mining claim.

Work on adjoining claims

(9) Assessment work performed on any mining claim is eligible for distribution of credits on adjoining mining claims,

(a) held by the holder of the claim on which the work was done; or

(b) optioned by the holder of the claim on which the work was done.

Work on optioned claims

(10) Assessment work performed on an optioned mining claim is eligible for distribution on adjoining mining claims,

(a) held under the option; or

(b) held by the optionee as the holder of record.

Varying grouping

(11) Where work has been distributed under subsection (9) or (10), the holder of a mining claim or optionee of record may

vary the mining claims grouped for subsequent recording of work.

Work on leased or patented mining rights

(12) Assessment work performed on patented mining rights may be applied as assessment credits on one or more contiguous mining claims in the prescribed manner if the recorder is satisfied that the patented mining rights and the claims are held by the same person or an agreement between the owner of the patented mining rights and the holder of the claims is on the record of each of the claims.

Excess work

(13) Where during any year the holder of a mining claim performs assessment work in excess of the prescribed minimum requirements, the holder may include the excess assessment work in the report referred to in subsection (4) and the recorder shall credit the excess work against the requirements of a subsequent year.

Certificate of performance of work

(14) The recorder, if satisfied that prescribed assessment work has been duly and sufficiently performed and on receiving the prescribed fee, shall issue a certificate to that effect in the prescribed form.

Inspection

(15) Before issuing a certificate under subsection (14), the recorder may inspect or order the inspection of the assessment work.

Certificate final evidence of work performed

(16) Subject to subsection (17), a certificate issued under subsection (14) is final and conclusive evidence of the due performance of the assessment work therein certified.

Cancellation

(17) Where a certificate is issued under subsection (14) as a result of fraud or mistake, the Commissioner may cancel it upon the application of the Director and a decision by the Commissioner to cancel a certificate is final.

Proportionate contribution of work by co-holders

(18) Where two or more persons are the holders of a mining claim, each of them shall contribute proportionately to his interest or as they otherwise agree between themselves to the cost of the assessment work required to be done thereon.

Vesting order

(19) Where a person fails to contribute proportionately under subsection (18), the other person may apply for a vesting order under subsection 124 (2). R.S.O. 1980, c. 268, s. 76, *amended*.

Report of technical assessment work

44.—(1) Where any report relating to technical assessment work is required to be submitted to the recorder in accordance with this Act or the regulations and,

(a) it is not received by the recorder within sixty days after the recording of the assessment work, he shall cancel the assessment work credits as of the day on which the work was required to be performed; or

(b) it does not, in the opinion of the Minister, meet the prescribed technical standards, the Minister may allow a lesser amount of credit or may instruct the recorder to cancel the assessment work credits and the effective day of the amended credit or cancellation shall be the day the amendment or cancellation is recorded by the recorder.

Postmark does not prevail

(2) For the purpose of this section, subsection 38 (3) does not apply.

Results public

(3) The results of all assessment work submitted under this section shall be available to the public except as prescribed in the regulations. *New*.

Approval of credits

45. A decision by the Minister under clause 44 (1) (b) concerning the amount of assessment work credits to be allowed is final. R.S.O. 1980, c. 268, s. 77 (21).

Extension of time

46. The recorder may allow an extension of time to the limits set out in section 44 to a maximum of an additional sixty days. *New*.

Work prohibited by *Forest Fires Prevention Act* R.S.O. 1980, c. 173

47.—(1) Where, in order to begin assessment work under this Act, a work permit that is required under any other Act is refused or the assessment work is prohibited under the *Forest Fires Prevention Act*, the recorder shall, upon receiving satisfactory evidence of the refusal or prohibition, record the refusal or prohibition on the record of the mining claim.

Recording rescission

(2) Upon a recorder being notified that a refusal or prohibition referred to in subsection (1) is rescinded, he shall record the date of the rescission on the record of the mining claim.

Extension of time

(3) Upon a recording being made under subsection (2), the time for the performance of work is extended by the time lapsed between the recording under subsections (1) and (2).

New anniversary date

(4) Where subsection (3) applies, the anniversary date shall be changed accordingly and the recorder shall so advise the recorded holder. R.S.O. 1980, c. 268, s. 79, *amended*.

EXPLORATION WORK SUMMARY

Work summary—ground

48.—(1) A summary in the prescribed form of all surface exploration work performed on unpatented mining claims shall be submitted, in duplicate, to the Minister within one year after completion, whether or not the work has been reported as assessment work.

Credit for work summary—ground

(2) Where a summary of work done is filed under subsection (1) by a holder of a mining claim, he is entitled to an assessment work credit as prescribed.

Work summary—airborne

(3) A summary in the prescribed form of all airborne geophysical and geochemical surveys performed in Ontario shall be submitted to the Minister within one year after the completion of the required flying, in duplicate, by the person who caused the survey to be performed.

Credit for work summary—airborne

(4) Where a summary of work done is filed under subsection (3), the person submitting the report is entitled to assessment work credits as prescribed. *New*.

EXTENSIONS OF TIME

Time extension

49.—(1) Upon application and payment of the prescribed fee being made to the recorder within thirty days before the time of forfeiture for non-performance of assessment work, the recorder may make an order granting an extension of time for the performance of the assessment work upon such terms and conditions as he considers proper and shall indicate on the record the date by which the work must be performed and recorded.

Illness

(2) Where the assessment work has not been performed because of the illness of the holder of the mining claim, the recorder may, without fee and upon application of the holder supported by proof of illness, extend the time for the performance of the assessment work and indicate the new date on the record.

One year limit

(3) An extension granted under subsection (1) or (2) shall not exceed one year.

Exception re s. 43 (7)

(4) No extension of time shall be granted for performance of assessment work prescribed for the second year period as referred to in subsection 43 (7).

Proof of illness

(5) Proof of illness referred to in subsection (2) shall be verified in writing by a duly qualified medical practitioner.

Time for additional work

(6) Where the holder of a mining claim is required to perform additional assessment work under subsection 65 (7), the recorder shall set the time or may set a date by which the work is to be performed and recorded and may set a new anniversary date.

For affixing tags

(7) If application is made to the recorder during the thirty day period before forfeiture or loss of rights would occur, the recorder may extend the time for affixing metal tags to the corner posts of a mining claim. *New*.

ABANDONMENT OF MINING CLAIMS

Abandonment of claim

50.—(1) The holder of a mining claim may abandon it at any time by giving notice to the recorder in the prescribed form.

Abandonment of a portion of claim

(2) The holder of a mining claim may abandon any part thereof by giving notice to the recorder, in the prescribed form, during the thirty day period before an anniversary date if,

(a) all assessment work required to be done by that anniversary date has been completed and recorded;

(b) there is nothing filed indicating an adverse interest against the claim; and

(c) the area to be retained is in multiples of sixteen hectare units in unsurveyed territories or aliquot parts of lots or sections in surveyed territory and the boundaries of the retained land are parallel to the original mining claim boundaries.

Order by recorder

(3) Where an abandonment is filed under subsection (2), the recorder may issue an order authorizing the moving of posts and the identification of new boundary lines and where such an order is issued, the holder of the mining claim shall file an affidavit as to compliance with the order by the time set in the order and a copy of the affidavit shall be posted forthwith by the recorder in the recording office marked with the date of posting.

Recording of abandonment

(4) Where a recorder receives a notice under subsection (1) or (2), he shall record the abandonment on the record of the mining claim as of the date of the receipt of the notice and shall forthwith post, in the recording office, a notice of the abandonment with the effective date thereof.

(5) A mining claim or part thereof abandoned under this section is open for staking from 9 o'clock in the forenoon of the sixteenth day after the abandonment. Abandoned claim open for staking

(6) The part of a mining claim abandoned under subsection (2) is open for staking from 9 o'clock in the forenoon of the sixteenth day after the posting of an affidavit under subsection (3). *New*. Idem

FORFEITURE OF UNPATENTED MINING CLAIMS

51.—(1) All rights to a mining claim forfeit to the Crown, without a declaration, entry or act by the recorder when, Forfeiture of rights in mining claims—work not done

(a) prescribed assessment work is not duly performed;

(b) any report of work required under subsection 43 (4) or 66 (3) is not made;

(c) an application required by subsection 66 (2) is not made within the prescribed time;

(d) boundary lines are not re-identified as required by section 23; or

(e) tags have not been affixed as required by subsection 17 (9).

(2) A mining claim forfeited under subsection (1) is open for staking from 9 o'clock in the forenoon of the day after the forfeiture. R.S.O. 1980, c. 268, s. 86, *amended*. Day for re-staking

52. When rights in a mining claim are forfeited under section 51, the recorder shall record the forfeiture and the date thereof on the record of the mining claim and shall forthwith post, in the recording office, a notice of the forfeiture. *New*. Notation of cancellation on record

53. Where the holder of a mining claim does not, within the allotted time, comply with, Forfeiture for non-compliance - staking and recording

(a) any requirement of this Act or the regulations as to staking or recording of a mining claim; or

(b) an order of the recorder,

upon the expiration of the allotted time the claim is forfeited and, without a declaration, entry or act by the recorder, is open for prospecting or staking from 9 o'clock in the forenoon of the day after the forfeiture. R.S.O. 1980, c. 268, s. 84, *amended*.

Forfeiture for fraud or illegal removal of posts, etc.

54. Where without the written consent of the recorder, the holder of a mining claim removes a tag, stake or post forming part of the staking of the claim or changes or effaces any writing or marking upon a tag, stake or post, the recorder may, after a hearing, declare that all rights in the mining claim forfeit to the Crown and shall,

(a) make an order cancelling the mining claim;

(b) set a date when the land is open for staking;

(c) mark the record of the mining claim "cancelled"; and

(d) post a copy of his order in the recording office. *New.*

RELIEF FROM FORFEITURE—RECORDER

Relief from forfeiture

55.—(1) A holder whose right is forfeited under subsection 51 (1), may within sixty days after the forfeiture, apply to the recorder for relief from the forfeiture and,

(a) in the case where prescribed assessment work was not performed within the time required by subsection 43 (1), an extension for a period of up to one year after the forfeiture, for the time for performing assessment work;

(b) in the case where the report of assessment work was not recorded within the time required by subsection 43 (4), authorization for the immediate recording of a proper report of assessment work; or

(c) in the case where an application and payment for a lease of a mining claim was not made within the time required by subsection 66 (4), authorization for the immediate filing of the application and payment of the prescribed fee.

Where no application

(2) No extension of time shall be granted under clause (1) (a) for performance of assessment work prescribed for the second year period as referred to in subsection 43 (7).

Idem

(3) Clause (1) (c) does not apply where the holder has exercised his right to continue to do work under subsection 66 (3) and filed a report of work of the prescribed amount.

Order by recorder

(4) Upon receiving an application under subsection (1) and the prescribed fee and where there is nothing filed indicating

adverse interest, the recorder may make the order applied for. *New*.

Relief from forfeiture—re-identifying lines

56. Where rights to a mining claim are forfeited under clause 51 (1) (e), the recorder, where there is nothing filed indicating adverse interest, may, at any time upon application and payment of the prescribed fee, make an order relieving the claim from forfeiture and authorizing the re-identification of the boundary lines of the mining claim. *New*.

Relief from forfeiture—tags

57.—(1) Where rights to a mining claim are forfeited under clause 51 (1) (f), the recorder, where there is nothing filed indicating adverse interest, may, at any time upon application and payment of the prescribed fee, make an order relieving the claim from forfeiture and authorizing the affixing of tags.

Compliance with order

(2) Where an order has been made under subsection (1), the holder of the mining claim involved shall notify the recorder, by affidavit, of his compliance with the order. *New*.

Order

58. An order made under section 55, 56 or 57 takes effect on the day it is made. *New*.

RELIEF FROM FORFEITURE-COMMISSIONER

Relief from forfeiture—where adverse interest

59.—(1) Where a holder has applied for relief from forfeiture under subsection 55 (1) and something is filed indicating an adverse interest, the recorder shall refer the matter to the Commissioner who may make an order upon such terms as he considers proper relieving the mining claim from forfeiture and,

(a) where clause 55 (1) (a) applies, extending the time for performing the assessment work for not longer than one year after the forfeiture;

(b) where clause 55 (1) (b) applies, authorizing the filing of a proper report of assessment work; or

(c) where clause 55 (1) (c) applies, authorizing the immediate filing of the application and paying the prescribed fee.

Effective date of order

(2) An order made under this section comes into effect when it is filed and the prescribed fees paid to the recorder. R.S.O. 1980, c. 268, s. 86, *amended*.

Relief from forfeiture—boundary lines or tags

60. Where a holder has applied for relief from forfeiture under clause 51 (1) (e) or (f) and something is filed indicating

an adverse interest, the recorder shall refer the matter to the Commissioner who may make an order upon such terms as he considers proper relieving the mining claim from forfeiture and extending the time to re-identify boundary lines or affix tags. *New.*

DEATH OF LICENSEE OR HOLDER OF RECORD

Death of licensee or holder

61. Where a licensee in whose name a mining claim has been staked dies before the claim is recorded or where the holder of a mining claim dies before the issue of a lease thereof, no person, without the consent of the Commissioner, shall stake a mining claim comprising any part thereof within one year following the death and the Commissioner may, on application, within the year make such order as he considers proper vesting the interests of the deceased in the mining claim in the personal representative, devisee or next of kin of the licensee or holder and extending the time for recording the claim, performing assessment work or applying for a lease, as the case may be, notwithstanding any abandonment, forfeiture, cancellation or determination or rights and interests under any other provision of this Act. R.S.O. 1980, c. 268, s. 88, *amended.*

INSPECTIONS

Inspection by Commissioner, recorder or inspector

62.—(1) The Commissioner or the recorder may inspect or order an inspection of, and an inspector or other person appointed by the Minister may inspect, a mining claim at any time without notice to the licensee or holder for the purpose of ascertaining whether this Act or the regulations have been complied with.

Inspection in disputes, appeals, etc.

(2) The Commissioner or recorder may, in any proceedings before him, make or order an inspection, upon fifteen days notice thereof to the holder, of any mining claim or of any property concerning any question arising in connection therewith. R.S.O. 1980, c. 268, s. 89, *amended.*

Filing and recording of report of inspection

63.—(1) A report of every inspection under section 62 shall be filed by the person making the inspection and the recorder shall forthwith enter upon the record of the mining claim the result of the inspection and the date of the recording.

Hearing

(2) If the recorder is of the opinion that, based upon a report referred to in subsection (1), there is a question as to compliance with the provisions of this Act or the regulations, he shall hold a hearing to determine the question.

Notice

(3) Where the recorder decides to hold a hearing under subsection (2) he shall serve a copy of the report together with notice as to the time and place of the hearing, to the holder of the mining claim involved and to all other persons who appear to have an interest in the claim.

Application for reinspection

(4) A holder of a mining claim who receives a notice of hearing under subsection (3) without having received fifteen days notice that an inspection was to have been made, may apply to the recorder, within thirty days after the date of the notice of hearing, for a reinspection.

Order for reinspection

(5) Where a recorder who receives an application under subsection (4) determines that the applicant or any other interested person has been prejudiced because of inadequate notice of inspection, he shall order a reinspection. *New*.

SURFACE RIGHTS COMPENSATION

Right of prior owner, etc., to compensation

64.—(1) A holder of a prospector's licence who prospects or stakes a mining claim or the holder of a mining claim who performs assessment work or carries on mining operations on land,

(a) in respect of which surface rights have been granted, leased or sold with reservation of mines, minerals or mining rights to the Crown; or

(b) that is legally occupied or used by a person who has made improvements thereon that, in the opinion of the Commissioner, entitle him to compensation,

shall compensate the owner, lessee, legal occupant or user for damages sustained by that person as a consequence of the prospecting, staking, assessment work or mining operations.

Order for compensation

(2) If an agreement is not reached in respect of compensation payable under subsection (1), any person interested may apply from time to time to the Commissioner for an order awarding compensation.

Idem

(3) Pursuant to an application under subsection (2), the Commissioner may, after a hearing, order compensation to be paid in the amount and manner that the Commissioner considers proper.

Idem

(4) An order under subsection (3) is final except where the total amount awarded is in excess of $10,000 in which event, either party to the proceedings may appeal to the Divisional Court.

Exception

(5) Subsection (1) does not apply in respect of land for which a lease of the mining rights has been issued before the disposition of the surface rights. *New*.

Prohibiting work pending settlement

(6) Where an application is made under subsection (2), the Commissioner may order the holder of the mining claim to give security for payment of the compensation and may order the suspension of such prospecting, assessment work or mining operations on the land as is specified in the order.

Ex parte order

(7) An order under subsection (6) may be made *ex parte* where the Commissioner is satisfied that irreparable damage would be caused to the surface rights of the land through delay.

Lien for compensation

(8) The right to compensation under this section constitutes a lien on the mining claim involved. R.S.O. 1980, c. 268, s. 92, *amended*.

SURVEY OF MINING CLAIMS

Survey required

65.—(1) Subject to subsection (3), no mining claim may be leased unless there is a survey of the claim made by an Ontario land surveyor.

Consent

(2) No survey shall be made of a mining claim without the prior written consent of the recorder.

Waiver

(3) The recorder may waive the requirement for a survey referred to in subsection (1).

Consent to perimeter survey

(4) Where two or more mining claims are contiguous and are recorded in one name or in more than one name with each co-holder holding an equal interest in each claim, the recorder may, upon the requirement set out in subsection (5) being met, consent to a perimeter survey being made of the circumference of the contiguous mining claims in lieu of a survey referred to in subsection (1).

Inspection before perimeter survey

(5) Before a recorder consents to a perimeter survey, he must be satisfied, on the basis of an inspector's report, that the requirements of this Act concerning the staking of mining claims have been complied with.

Instruction for perimeter survey

(6) Where the recorder consents to a perimeter survey being made under subsection (4), the Minister shall issue written instructions setting out how it is to be performed.

Work requirement where area exceeds recorded area

(7) Where a survey establishes that the area of a mining claim exceeds the prescribed area by more than 10 per cent and assessment work has not been done as required for an area of

that size, the holder of the mining claim shall perform such additional work as is prescribed but the recorder may waive the additional work requirements and accept a payment in a prescribed amount in lieu thereof.

Reduction of area of mining claim

(8) Where a survey establishes that the area of a mining claim exceeds the prescribed maximum area, the recorder may, for the purpose of reducing the area thereof, direct changes in the limits of the mining claim in any way he sees fit.

Change of circumstance

(9) Where there is more than one holder of claims covered by a perimeter survey, the number of holders and interest held by each may be changed until an application for lease is made if at the time of the application, each co-holder in the claims covered by the perimeter survey holds the same proportionate interest in each claim. R.S.O. 1980, c. 268, s. 108, *amended*.

Surveys in sub-divided townships

(10) Every survey or legal description of a mining claim within surveyed territory shall indicate and describe the parts of the lots or sections, according to the original survey of the township, together with the areas thereof. R.S.O. 1980, c. 268, s. 45 (3).

MINING AND SURFACE RIGHTS LEASE

Right to lease of claim

66.—(1) A holder of a mining claim who has complied with this Act and the regulations is entitled to a lease.

Lease

(2) A lease under subsection (1) may be for surface and mining rights or, where the surface rights have been disposed of before the claim was staked, for mining rights only.

Option

(3) A recorded holder who has performed the prescribed amount of work within the time required under this Act shall during each ensuing year,

(a) apply and pay for a lease as prescribed by the end of that year; or

(b) perform prescribed assessment work and file a work report by the end of that year.

Application for lease

(4) An application for a lease accompanied by proof of compensation for surface right damages, if required, and the rent for the first year of the term of the lease and payment of the prescribed fee for a lease must be made to the recorder within one year after the day upon which all work on a mining claim is required to be performed.

Term of lease and right of renewal

(5) A lease of mining and surface rights shall be for a term of twenty-one years and, subject to the terms in the lease, may be renewed.

Mining rights only

(6) The holder of a mining claim may elect to apply for a lease of the mining rights only.

Disposition under R.S.O. 1980, c. 413

(7) Where a lease of mining rights has been granted under subsection (6), the surface rights may be disposed of under the *Public Lands Act* or this Act, subject to the rights of the lessee, upon notice being given to the lessee.

Settling conflict

(8) Where there is a conflict as to the intended use of the surface rights between a lessee and an applicant under the *Public Lands Act* or this Act, the Minister shall refer the matter to the Commissioner for determination.

Right to extract minerals

(9) A lease mentioned in subsection (1) shall grant the exclusive right to extract minerals.

Sand, etc., not included in lease

(10) A lease mentioned in subsection (1) shall not grant the right to take or remove sand, gravel or peat.

Access granted by lease

(11) Except where an order has been made under subsection 64 (6) and subject to the payment of compensation to an owner, lessee or occupant of the surface rights, every lessee of mining rights issued under this Act, has such right of access to the land described in his lease as is necessary for prospecting and exploration for minerals, development of mines and mining of ores and minerals except ores and minerals expressly excepted in the lease or under this Act.

Reservations

(12) Every lease issued under this Act is subject to prescribed reservations, provisions and conditions.

Exclusion of provisions

(13) A lease may contain a provision that any prescribed reservation, provision or condition does not apply to that lease in which case, that reservation, provision or condition does not apply. *New*.

Notice of termination of lease

(14) Where a lease given under this Act expires or is terminated, notice of the expiration or termination may be registered in the proper land registry office, and upon registration all the interests of the lessee, his heirs, executors, administrators and assigns cease and the land included in the lease is revested in the Crown free from every claim.

Registration of notice of termination R.S.O. 1980, cc. 230, 445

(15) Upon registration of a notice under subsection (14), the *Land Titles Act* or the *Registry Act*, as the case may be, ceases

to apply to the land included in the lease and the land registrar shall note that fact in his register.

Restriction on prospecting, etc.

(16) Land to which subsection (14) applies is not open for prospecting, staking, sale or lease under this Act until a date fixed by the Minister, two weeks notice of which shall be published in *The Ontario Gazette*.

Transfer of lease or renewal

(17) A lease given under this Act is not transferable without the written consent of the Minister or an employee duly authorized by him and payment of the prescribed fee.

Disposition of surface rights reserved in a lease

R.S.O. 1980, c. 413

(18) Any surface rights reserved in a lease may be dealt with under the *Public Lands Act* or the regulations made thereunder.

Rental where area of mining claim exceeds prescribed area

(19) Where the area of a mining claim exceeds by more than 10 per cent the area prescribed for a mining claim and the claim is not reduced in size, the lease rental, per hectare, of the area in excess of the prescribed area is twice the prescribed rental.

Exception

(20) Subsection (19) does not apply where there is a group of contiguous claims held by the same licensee and their average area does not exceed, by more than 10 per cent, the area prescribed for a mining claim. R.S.O. 1980, c. 268, s. 94 (12-17), *amended*.

Summer resort parcel

(21) Notwithstanding clause 14 (1) (c), where at the time of applying for lease, the holder of a mining claim can establish to the satisfaction of the Minister that the mining rights lying under any summer resort parcel situated within the limits of the claim contain valuable mineral in place, the mining rights may be included in the lease.

Reduction in rent

(22) Where the lessee can establish to the satisfaction of the Minister that he has started mineral production on the land under lease, the lessee is entitled to a prescribed reduction in annual rent. *New*.

LEASE ISSUED UNDER PREVIOUS ACT

Interpretation

67.—(1) In this section, "lease" means a lease of surface and mining rights or of the mining rights issued under section 47, 52 or 100 of *The Mining Act*, being chapter 241 of the Revised Statutes of Ontario, 1960, or a predecessor thereof, and includes a renewal of such a lease.

Rate

(2) Subject to subsection (3), notwithstanding the provisions of a lease, the annual rental for a lease is $1 an acre with a minimum annual rental of $10 payable in advance.

Application

(3) Subsection (2) does not affect the rental payable under a lease for the balance of the term in effect on the 30th day of June, 1972.

Renewal of lease

(4) A lease is renewable in perpetuity for periods of ten years and every renewal shall date from the day following the expiry of the lease if application therefor is made within ninety days after the expiration of the lease or within such further period as the Minister, in the circumstances of the case, considers proper.

Termination of lease for arrears of rent

(5) Where payment of the rental under a lease is in arrears for two years or more, the lease may be terminated by a notice in writing as prescribed.

Application of s. 66

(6) Subsections 66 (14), (15) and (16) apply to a lease under this section.

Lessee may be issued lease under s. 66

(7) The holder of a lease, upon written application therefor and surrender of his lease, may be issued a lease under section 66 for a term of twenty-one years. R.S.O. 1980, c. 268, s. 95, *amended*.

SURFACE RIGHTS LEASE

Lease of surface rights

68.—(1) Where the lessee or owner of mining rights or the holder of a licence of occupation requires the use of surface rights for the disposal of tailings or waste material, the sinking of a shaft or erection of a building for mining or mining purposes or any other purpose essential to mining or mining exploration, the Minister may lease to him any available surface rights.

Application for lease of surface rights

(2) Application for a lease of surface rights must be made in writing to the Minister and the applicant shall furnish,

(a) a statement of the particular purposes for which the surface rights are to be used;

(b) an adequate description and plan or sketch of the area applied for;

(c) the prescribed application fee and the first year's rental;

(d) proof of ownership, or, in the case of a licence of occupation, proof that the applicant is the holder of the licence of occupation, of the mining lands or mining rights that are the basis of the application; and

(e) such other particulars as the Minister may require.

Survey

(3) The Minister may require the applicant to furnish a survey by an Ontario land surveyor.

Term of lease

(4) A lease issued under this section shall be for a term of twenty-one years but, where the mining lands or mining rights that are the basis of the application are held under a lease, the term shall be coterminous with the lease.

Application of s. 66

(5) Section 66 applies with necessary modifications to a lease issued under this section but, where the mining lands or mining rights that are the basis of the application are held under a lease, the renewal term shall be coterminous with the lease.

Termination of lease where lands forfeited

(6) Where the mining land or mining rights that are the basis for a lease issued under this section are revested in or are forfeited or revert to the Crown, the lease is forfeited, and subsection 66 (14) applies.

Holder of lease and holder of land to be same person

(7) Where the holder of a lease issued under this section ceases to be the holder of the land or mining rights in respect of which the lease was issued, the lease is forfeited, and subsection 66 (14) applies. R.S.O. 1980, c. 268, s. 97, *amended*.

SALT, PEAT OR OTHER LEASE

Salt, peat or other leases

69. Notwithstanding anything in this Act, the Minister may issue a lease for minerals in alluvial deposits, or for salt or peat. *New*.

FORFEITURE OF LEASE

Lease void where lands used other than for mining purposes

70. The lands, surface rights or mining rights held under a lease that has been or will be issued under this Act shall be used solely for the purposes of the mining industry and, on default thereof and on the recommendation of the Commissioner, the Lieutenant Governor in Council may declare the lease void and subsections 66 (14) and (15) apply. R.S.O. 1980, c. 268, s. 98.

FREEHOLD PATENT

Right to patent

71.—(1) Subject to subsection (5), where a holder of a lease issued under this Act produces evidence, satisfactory to

the Minister, that he is producing mineral in substantial quantities and production has been continuous for more than one year, he is entitled, upon application therefor and surrender of his lease, to a freehold patent of mining rights encompassing the ore body under production and such surface rights as are necessary for the operation of the mine.

Application for patent

(2) Application for a freehold patent shall be in the prescribed form accompanied by the prescribed fee.

Revised lease

(3) Where a patent is granted under subsection (1), a new lease for the balance of the term remaining under the surrendered lease shall be issued for the remaining area formerly held under lease.

Survey

(4) Where a patent is granted under subsection (1), the land to be patented and the remaining land to be held under a new lease shall be surveyed by the applicant in the prescribed manner.

Lease of land under navigable water

(5) Where land consists of land under navigable water, a freehold patent shall not be granted but, upon written application therefor and surrender of his lease, the lessee is entitled to a new lease renewable in perpetuity for periods of twenty-one years with every renewal dating from the day following the expiration of the lease or last renewal thereof if application therefor is made within ninety days after the expiration of the lease or the last renewal thereof or within such further periods as the Minister, in the circumstances of the case, considers proper. R.S.O. 1980, c. 268, s. 96, *amended*.

Disposal of surface rights R.S.O. 1980, c. 413

(6) Any surface rights excluded in a patent of mining rights may be dealt with under Part III or under the *Public Lands Act* or the regulations made thereunder. R.S.O. 1980, c. 268, s. 102, *amended*.

Patents issued under this Act to vest minerals

(7) Every patent of Crown land that purports to be issued under this Act, unless it is otherwise expressly stated, vests in the patentee of the estate thereby granted all title of the Crown in the land and all mines and minerals therein. R.S.O. 1980, c. 268, c. 103 (1).

Application of R.S.O. 1980, c. 90

(8) Notwithstanding section 19 of the *Conveyancing and Law of Property Act*, where a patent or lease of a mining claim was or is issued under this Act or a precedessor thereof on or after the 1st day of July, 1914 and the patent or lease reserves the surface rights, section 16 of the *Conveyancing and Law of Property Act* applies if the surface rights were the property of the Crown and were not applied for or occupied at the time

that the mining claim was staked out and recorded. R.S.O. 1980, c. 268, s. 103 (2).

Reservations

72.—(1) Every patent issued under this Act is subject to the prescribed reservations.

Exclusions

(2) A patent is not subject to such prescribed reservations as are expressly excluded therein. *New.*

Correction of erroneous title

73. Where an instrument of title has been issued to or in the name of the wrong person through mistake or contains a clerical error or misnomer, a wrong description of the land intended to be granted, the Minister, if there is no adverse claim and whether or not the land has been registered under the *Land Titles Act* or the *Registry Act*, may direct the defective instrument to be cancelled and a correct one to be issued in its stead and the corrected instrument shall relate back to the date of the cancelled one and has the same effect as if issued on the day of the cancelled instrument. R.S.O. 1980, c. 268, s. 106.

R.S.O. 1980, cc. 230, 445

Correction of title due to annulment of survey

R.S.O. 1980, c. 413

74. Where an instrument of title has been issued under this Act for any land or mining rights affected by an annulment under subsection 7 (1) of the *Public Lands Act*, the Minister, whether or not the land has been registered under the *Land Titles Act* or the *Registry Act*, may cancel the instrument by issuing an instrument containing a revised description of the land or mining rights with the corrected instrument relating back to the date of the cancelled one and having the same effect as if issued on the day of the cancelled instrument. R.S.O. 1980, c. 268, s. 107.

All ores and minerals to be treated in Canada

75.—(1) All interests in land, claims or mining rights patented, leased or otherwise disposed of are subject to the condition that all ores or minerals raised or removed therefrom shall be treated and refined in Canada so as to yield refined metal or other product suitable for direct use in the arts without further treatment, in default whereof the Lieutenant Governor in Council may declare the interest in the land, claims or mining rights to be void and the order in council so declaring shall be registered in the proper land registry office or, in the case of a licence of occupation, filed in the office of the Director whereupon the land, claims or mining rights revert to and become vested in the Crown free from every interest or claim of any other person.

Idem

(2) For the purposes of subsection (1), the Minister may determine the stage of refinement at which any mineral substance is refined metal or other product suitable for direct use in the arts without further treatment.

Exemptions

(3) The Lieutenant Governor in Council may exempt any land, claims or mining rights from the operation of this section for such period of times as seems proper.

Where conflict section prevails

(4) Where there is any conflict between provisions of this section and the provisions of any general or special Act, the provisions of this section prevail. R.S.O. 1980, c. 268, s. 104.

EXPLORATORY LICENCE OF OCCUPATION

Exploratory licences of occupation

76.—(1) Subject to the regulations, the Minister may issue exploratory licences of occupation.

Exception

(2) Notwithstanding subsection (1), the Minister, in special circumstances and with the approval of the Lieutenant Governor in Council, may issue exploratory licences of occupation subject to such terms as he considers proper.

Minister may make regulations

(3) The Minister may make regulations,

(a) regulating the issue of exploratory licences of occupation;

(b) classifying exploratory licences of occupation;

(c) exempting any class of licence from any provision of this Act or the regulations;

(d) prescribing terms to which any class of licence is subject. *New*.

Right to lease

77. Where a licensee holding a licence issued under section 76 finds a deposit of minerals in alluvial deposits or a deposit of peat that, in the opinion of the Minister is of potential economic importance, the licensee may apply for a lease of the land sufficient to encompass the ore deposit or 10 per cent of the land held under the licence at the time of application whichever is greater. *New*.

Special circumstances —licence of occupation

78. The Minister may, in special circumstances, issue a licence of occupation of any mining land or mining rights subject to such terms as he considers proper. *New*.

Special circumstances —patent

79. Notwithstanding anything in this Act, the Minister, in special circumstances and with the approval of the Lieutenant Governor in Council, may issue patents of mining land or mining rights subject to such terms as he considers proper. R.S.O. 1980, c. 268, s. 190 (2), *amended*.

PART III

QUARRY PERMITS

Interpretation

80. In this Part,

(a) "district manager" means the manager of the administrative district of the Ministry in which the quarry is situated;

(b) "permittee" means the holder of a quarry permit;

(c) "quarry permit" means a permit issued under this Part to remove quarry material from Crown land. *New*.

Quarry permit

81.—(1) No person shall take any quarry material that is the property of the Crown unless he is a permittee or a holder of a letter of authority issued under subsection 89 (1).

Issue of permit

(2) A district manager may, where it is not contrary to the public interest, issue a quarry permit in accordance with the regulations.

Free permit

(3) A district manager may issue a quarry permit free of charge to,

(a) a municipality;

(b) a charitable organization; or

(c) a resident of Ontario, if the purpose for removing the material is for his own use or if the material to be removed is not for sale or use for any commercial or industrial purpose.

Term

(4) A quarry permit may be issued for such period of time not exceeding five years as the district manager may determine.

Subject to conditions

(5) Every quarry permit and the operations authorized by it are subject to such terms and conditions as are prescribed.

Other provisions

(6) In addition to the prescribed terms and conditions, the district manager may include such terms and conditions as are not inconsistent with the intent of this Act and the regulations in a quarry permit as he considers advisable.

Renewal

(7) Subject to subsection 82 (1), a district manager shall renew a quarry permit for a term of not more than five years

upon receiving an application therefor in the prescribed form and the prescribed fee.

Area reduction

(8) Where a quarry permit is renewed, the renewed permit may cover a smaller area than the original permit covered.

Transfer

(9) A quarry permit may be transferred only with the written consent of the district manager and on payment of the prescribed fee.

Sketch

(10) A district manager may require an applicant for a quarry permit to file a sketch of the area in which he desires to operate, indicating the extent and nature of the deposit, the location of all buildings or improvements adjacent to the deposit and all other pertinent information.

Excluded provisions

(11) Where a quarry permit specifically excludes any prescribed term or condition, that term or condition does not apply in respect of that permit. R.S.O. 1980, c. 268, s. 118, *amended*.

Suspension of permit

82.—(1) A district manager may suspend, cancel or refuse to renew, a quarry permit where,

(a) the permittee has contravened any provision of this Act or the regulations respecting a quarry permit or any of the terms or conditions to which the permit is subject;

(b) in the opinion of the district manager, a substantial amount of quarry material has not been removed under the permit during a continuous period of more than one year; or

(c) he considers the continuation of operations under the permit to be contrary to the public interest.

Notice

(2) A district manager who proposes to act under subsection (1) or subsection 81 (8) must give the permittee notice of his intention together with written reasons therefor.

Entitlement to hearing

(3) A notice under subsection (2) shall state that the permittee is entitled to a hearing by the district manager if the permittee mails or delivers a notice requiring a hearing to the district manager within fifteen days after the notice under subsection (2) is served upon him.

Hearing

(4) A district manager who receives a notice requiring a hearing under this section shall hold a hearing as to whether the quarry permit to which the hearing relates should be renewed,

suspended or cancelled, as the case may be, and the permittee and such other persons as the district manager may specify are parties to the hearing.

Application of R.S.O. 1980, c. 484

(5) The *Statutory Powers Procedure Act* does not apply in respect of a hearing under this section or section 83.

Reasons for decisions

(6) A district manager who holds a hearing under this section or section 83 shall give written reasons for the decision made by him in respect of the subject-matter of the hearing.

Right to continue operations

(7) Where a permittee requires a hearing under this section in respect of the intended cancellation, suspension or reduction of his quarry permit, he may continue to operate under the permit until a final decision is made.

Right to continue operations pending issue of renewal

(8) Where a permittee requires a hearing under this section in respect of the intended refusal to renew his quarry permit, he may continue to operate under the permit until a decision not to renew is made or until the term of the permit expires, whichever is the later. R.S.O. 1980, c. 268, s. 119 (1-7), *amended*.

Immediate suspension of operations

83.—(1) A district manager may order a permittee to immediately suspend operations under a quarry permit where, in the opinion of the district manager, the continuation of operations under the permit is in contravention of this Act or the regulations and will cause damage to property or is an immediate threat to the public interest.

Notice

(2) An order under subsection (1) shall be accompanied by a notice stating that the permittee is entitled to a hearing by the district manager if the permittee mails or delivers a notice requiring a hearing to the district manager.

Hearing

(3) A district manager who receives a notice requiring a hearing under this section shall hold a hearing as to whether the suspended operations may be resumed and the permittee and such other persons as the district manager may specify are parties to the hearing. R.S.O. 1980, c. 268, s. 119 (8), *amended*.

Royalty payment

84.—(1) The holder of a quarry permit other than a quarry permit issued free of charge shall pay the Treasurer of Ontario for the quarry material removed such royalty as the district manager may determine but, subject to subsection (4), the amount payable shall not be less than the minimum royalty prescribed.

Factors determining payment

(2) In determining the royalty to be paid under subsection (1), the district manager shall have regard to the location, type

and accessibility of the deposit, the amount of the quarry material to be removed and the intended use of the product.

Royalty for renewal

(3) The district manager may vary the royalty payable when a quarry permit is renewed.

Waiving payment

(4) Where quarry material is used in the public interest, the district manager may, at any time, waive the royalty payment.

Security for compliance with conditions of quarry permit

(5) The district manager may require a permittee to give security in the prescribed form for the payment of the amounts determined under subsection (1) and for the due performance of or compliance with any of the conditions of the quarry permit or the provisions of the Act or the regulations.

Forfeiture of security

(6) Where the permittee fails to pay the royalty required under subsection (1) in the prescribed time or where the permittee does not comply with all of the conditions of the permit or regulations, the security provided under subsection (5) is forfeited to the Crown. R.S.O. 1980, c. 268, s. 120, *amended*.

Records

85. A permittee shall keep a detailed record of his operations and shall retain copies of all documents relating to sales and shipments and all accounts, records and documents relating to his operations shall be kept available for inspection by any person authorized by the district manager to inspect the accounts, records and documents. R.S.O. 1980, c. 268, s. 121, *amended*.

Power to inspect

86. For the purpose of this Part and subject to subsection 6 (5), the district manager may authorize any person to enter any lands and premises subject to a quarry permit and that person shall have access to all accounts, records and documents kept in relation to the operation of the quarry. R.S.O. 1980, c. 268, s. 122.

Returns

87. Where quarry material is removed, the holder of a quarry permit shall, unless otherwise directed by the district manager, make a return on the prescribed form on or before the tenth day of each month showing the quantity of the quarry material removed during the preceding month accompanied by the payment required under subsection 84 (1). R.S.O. 1980, c. 268, s. 123, *amended*.

Right to stake claim

88. A quarry permit does not affect the right of a holder of a prospector's licence to stake a mining claim on the land covered by the permit, but the mining claim is subject to the rights of the holder of the quarry permit and any question of property damage shall be determined in the manner provided in section 64. R.S.O. 1980, c. 268, s. 124, *amended*.

89.—(1) Where any municipality or individual whose principal residence is in Ontario applies for quarry material for his personal use, not exceeding 500 cubic yards, the district manager may issue a letter of authority permitting the removal of material upon such terms as he considers proper. Quarry material for personal use

(2) Where permission is issued under subsection (1), no payment shall be charged and any renewal thereof shall be at the discretion of the district manager and his decision is final. *New*. No royalty payment

PART IV

HEARINGS AND APPEALS

HEARINGS BY RECORDER

90. The recorder has the authority to hear and determine disputes as to unpatented mining claims situate within his mining division. *New*. Jurisdiction of recorder

91. Any question arising before the issue of a certificate of record of a mining claim concerning compliance with this Act and the regulations in respect of the mining claim, unless the recorder, with the consent of the Commissioner, transfers the question to the Commissioner for his decision, shall in the first instance be decided by the recorder. R.S.O. 1980, c. 268, s. 131 (2), *amended*. Recorder to decide matter in first instance

92.—(1) The recorder may give directions for the conduct and carrying on of proceedings before him and, in so doing, he shall adopt the cheapest and simplest methods of determining the questions arising before him that afford all interested parties an adequate opportunity of knowing the issues in the proceedings, presenting material and making representations on their behalf. Directions as to conduct of proceedings

(2) The recorder shall give written reasons for any decisions made by him in proceedings before him. R.S.O. 1980, c. 268, s. 132, *amended*. Reason for decision

(3) The recorder shall forthwith enter in the records of the recording office a summary of every decision made by him and shall serve the persons affected thereby with notice of the decision. Summary and notice of recorder's decision

(4) The decision of the recorder is final unless appealed from as provided in section 93. R.S.O. 1980, c. 268, s. 131, *amended*. Finality of decision

APPEALS TO COMMISSIONER

Appeal to Commissioner

93.—(1) A person affected by a decision of or act, whether ministerial, administrative or judicial, done or refused or neglected to be done by a district manager under this Act or a recorder, may appeal to the Commissioner.

Idem

(2) Where it appears to him to be in the public interest, the Director or Supervisor on his behalf may appeal to the Commissioner any decision of a recorder or district manager without payment of a fee.

Appeal instituted

(3) Any person entitled to appeal to the Commissioner may do so by,

(a) filing notice in the prescribed form in the appropriate office of a recorder or district manager;

(b) paying the prescribed fee; and

(c) serving a copy of the notice on all interested parties,

within fifteen days after the decision appealed from is recorded or the act that is the subject-matter of the appeal is done.

Extension of time

(4) The Commissioner may extend the time for filing notice under clause (3) (a) for a period of not more than fifteen days and the time for service under clause (3) (c) for such period as seems reasonable in the circumstances.

Substitute service

(5) Where service under clause (3) (c) cannot reasonably be made, the Commissioner may make such order for substitutional service as he considers just.

Leave to appeal

(6) Where a person entitled to be notified under subsection (3) satisfies the Commissioner that he did not receive notice and has suffered an injustice, the Commissioner may allow that person to institute an appeal on such terms as the Commissioner considers just. R.S.O. 1980, c. 268, s. 133, *amended*.

Jurisdiction of Commissioner

94. No action lies and no other proceeding shall be taken in any court as to any matter concerning any right, privilege or interest conferred by or under the authority of this Act but, except where otherwise provided in this Act, every claim, question and dispute in respect of such matter shall be determined by the Commissioner and, in the exercise of the power conferred by this section, the Commissioner may make such order or give such directions as he considers necessary to make effectual and enforce compliance with his decision. R.S.O. 1980, c. 268, s. 126.

Crown patents

95.—(1) The Commissioner has no power or authority to declare forfeited or void or to cancel any patent issued for lands, mining land, mining claims or mining rights, but an action or proceeding to declare forfeited or void or to cancel any such patent may be brought in the Supreme Court.

Where cancellations permitted

(2) Subsection (1) does not apply to cancellations or forfeitures provided for in this Act or in the patent. R.S.O. 1980, c. 268, s. 127.

Transfer of proceeding to Supreme Court

96. A party to a proceeding brought before the Commissioner, involving any right, privilege or interest or in connection with any patented land, mining land, mining claims or mining rights under this Act, may, at any stage of the proceeding, apply to the Supreme Court for an order transferring the proceeding to the Supreme Court. R.S.O. 1980, c. 168, s. 128.

Reference from court to Commissioner

97. Where, in the opinion of the court in which an action is brought, the proceeding may be more conveniently dealt with or disposed of by the Commissioner, the court may, at any stage of the proceeding, refer the action or any question therein to the Commissioner as an official referee on such terms as to the court seems just and the Commissioner shall thereafter give directions for the continuance of the proceeding before him and, subject to the order of reference, all costs are in his discretion. R.S.O. 1980, c. 268, s. 129.

Transfer from court to Commissioner

98. Where a proceeding that should have been taken before the Commissioner is brought in a court, the court may, at any stage of the proceeding, transfer it to the Commissioner. R.S.O. 1980, c. 268, s. 130.

Notice of interest

99.—(1) Any party in a proceeding concerning an interest in mining rights in an unpatented mining claim or other recorded right or interest is entitled to obtain from the Commissioner a notice of interest in the prescribed form. *New*.

Recording of notice of interest

(2) A recorder who receives a notice issued under subsection (1) and the prescribed fee shall file and record the notice and forthwith send a copy of the notice, by prepaid mail, to every recorded holder of an interest in the mining rights.

Effect of notice

(3) A notice recorded under subsection (2) is actual notice to all persons of the proceedings and the mining claim involved shall not be transferred and no document other than a report of work shall be recorded in respect thereof, while the notice is in effect, without the written consent of the Commissioner.

Order vacating

(4) Any person with an interest in the subject-matter of the notice may, at any time, apply to the Commissioner for an order vacating the notice.

Continuing a notice of interest

(5) A recorder who receives an order made under subsection (4) shall forthwith send by prepaid mail a copy of the order to every recorded holder of an interest in the mining claim.

Fee for filing notice includes fee for filing order

(6) A prescribed fee for filing a notice of interest includes the fee for filing any order made by the Commissioner in the proceeding. R.S.O. 1980, c. 268, s. 75, *amended*.

Pending proceedings noted

100. Where on an application for relief from forfeiture or the Commissioner considers it to be in the public interest or in the interest of the holder of an unpatented mining claim or a person beneficially entitled to rights and interests in the mining rights therein, he may, in writing or orally and subsequently confirmed in writing, direct that it be noted on the record of the mining claim that it is subject to pending proceedings. *New*.

HEARINGS BY COMMISSIONER

Application for hearing

101.—(1) Any person may apply to the Commissioner,

(a) to appeal a decision of a recorder or district manager under this Act; or

(b) for a hearing in respect of any matter within his jurisdiction.

Hearing

(2) Upon receiving an application under subsection (1) or having a matter referred to him under section 91, the Commissioner shall hold a hearing. R.S.O. 1980, c. 268, s. 134, *amended*.

Hearing

102.—(1) The Commissioner may hold a hearing *ex parte* or upon giving notice to such persons as he considers necessary.

Time for hearing

(2) The Commissioner may fix such time for a hearing as will permit the matter to be disposed of as promptly as possible allowing adequate time to the parties to prepare their cases but, unless all parties consent thereto, the hearing shall not be held less than ten days after service of the notice of the hearing on the parties.

Place for hearing

(3) The Commissioner shall select as the place for a hearing such place as he considers most convenient for the parties in the county or district or one of the counties or districts in which the

lands or mining rights affected are situate unless it appears to him desirable that the hearing should be in some other county or district. R.S.O. 1980, c. 268, s. 135, *amended*.

Permission for hearing

103. In any matter or proceeding, other than an appeal, the Commissioner may, if a certificate of record has been issued, require the applicant for a hearing to satisfy him that there is reasonable ground for the application or, in any such case or in any case where permission to take the proceeding is necessary, may allow the hearing or give such permission only upon such terms as to security for costs or otherwise as he considers just. R.S.O. 1980, c. 268, s. 135, *part*.

Directions of Commissioner re proceedings

104.—(1) The Commissioner may,

(a) give directions for having any matter or proceeding heard and decided without unnecessary formality;

(b) order the filing or serving of statements, particulars, objections or answers, the production of documents and things and the making of amendments;

(c) order discoveries and examinations on affidavits;

(d) give such other directions respecting the procedure and hearing as he considers proper;

(e) make any appointment, notice or other proceeding returnable forthwith or at such time as he considers proper; and

(f) order or allow such substituted or other service as he considers proper.

Taking of evidence

(2) The Commissioner may take or order the evidence of any witness to be taken at any place in or out of Ontario. R.S.O. 1980, c. 268, s. 137, *amended*.

Exception to R.S.O.1980, c. 484

(3) Notwithstanding section 17 of the *Statutory Powers Procedure Act*, the Commissioner may render an oral decision with oral reasons. *New*.

Disobeying order or award of Commissioner

(4) Every person who wilfully neglects or refuses to obey any order or award of the Commissioner, except for the payment of money, is, in addition to any other liability, liable to a fine of not more than $250 and, upon conviction thereof, is liable to imprisonment for a term of not more than six months unless the fine and costs are sooner paid. R.S.O. 1980, c. 268, s. 174.

Interlocutory applications

105. The Commissioner may hear and dispose of any application not involving the final determination of the matter or proceeding, either *ex parte* or on notice, at any place he considers convenient and his decision upon any such application is final but, where the Commissioner makes his decision *ex parte*, he may subsequently reconsider and amend the decision. R.S.O. 1980, c. 268, s. 138.

Expert assistance

106. The Commissioner may obtain the assistance of experts who may, under his order, view and examine the property in question and, in giving his decision, he may give such weight to their opinion or report as he considers proper. R.S.O. 1980, c. 268, s. 139, *amended*.

Commissioner may call for evidence and view property

107.—(1) The Commissioner, in addition to hearing the evidence adduced by the parties, may require and receive such other evidence as he considers proper and may view and examine the property in question and give his decision upon such evidence or view and examination or may appoint a person to make an inspection of the property and may receive as evidence and act upon the report of the person so appointed.

Statement of view or special knowledge

(2) Where the Commissioner proceeds partly on a view or on any special knowledge or skill possessed by him, he shall put, in writing, a statement of the same sufficiently full to enable a judgment to be formed of the weight that should be given thereto.

View only

(3) Where the parties consent in writing, the Commissioner may proceed wholly upon a view and, in such case, his decision is final. R.S.O. 1980, c. 268, s. 140.

Disclosure of evidence to parties

108. Where the Commissioner receives any opinion, report or evidence under section 106 or 107 in any proceeding before him, the opinion, report or evidence shall be disclosed to the parties to the proceeding who, if they so request, shall be afforded an opportunity of cross-examining the person expressing the opinion, making the report or giving the evidence. R.S.O. 1980, c. 268, s. 141.

Decision on the merits

109. The Commissioner shall give his decision upon the real merits and substantial justice of the case. R.S.O. 1980, c. 268, s. 142.

Security for costs

110. Where the Commissioner considers the matter or proceeding vexatious or where it is brought by a person residing out of Ontario, he may order that such security for costs as he considers proper be given and that in default of the security being given within the time limited or in default of speedy

prosecution the matter or proceeding be dismissed. R.S.O. 1980, c. 268, s. 143.

Use of court rooms, etc.

111. Where the hearing is to be held at a place where a court house is situate, the Commissioner has the right to use the court room and, where the hearing is to take place in a municipality in which there is a hall belonging to the municipality but no court room, he has the right to use the hall. R.S.O. 1980, c. 268, s. 144.

Sheriffs, etc., to assist

112. Sheriffs, deputy sheriffs, constables and other peace officers shall aid, assist and obey the Commissioner in the exercise of the powers conferred on him by this Act whenever required so to do and shall, upon the certificate of the Commissioner, be paid the same fees as for similar services in carrying out the orders of a judge of the Supreme Court. R.S.O. 1980, c. 268, s. 145.

Recording of evidence

113. The evidence taken before the Commissioner shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court. R.S.O. 1980, c. 268, s. 146.

Costs

114. The Commissioner may in his discretion award costs to any party and may direct that such costs be taxed by the clerk of the county or district court or by a local taxing officer or by one of the taxing officers at Toronto or may order that a lump sum be paid in lieu of taxed costs. R.S.O. 1980, c. 268, s. 147.

Scale of costs

115.—(1) The costs and disbursements payable upon proceedings before the Commissioner as to any matter in which the value of the property in question does not, in the opinion of the Commissioner, exceed twice the monetary restriction of the jurisdiction of a county court in an action arising out of a contract shall be according to the tariff of the county court and as to any matter in which the value of the property in question, in his opinion, exceeds twice the monetary restriction shall be according to the tariff of the Supreme Court.

Tariff

(2) The Commissioner shall, in his order, direct the tariff upon which the costs and disbursements shall be taxed.

Counsel fees

(3) The Commissioner has the same powers as a judge of a county court or a taxing officer of the Supreme Court with respect to counsel fees.

No fee to record order upon direction of Commissioner

(4) Where an order is made by the Commissioner that would not ordinarily be recorded and he feels that it is in the public interest that it be recorded, he may direct the recorder to rec-

ord the order without fee. R.S.O. 1980, c. 268, s. 148, *amended*.

Witness fees

116. The fee and conduct money to be paid to a witness before the Commissioner or recorder shall be according to the county court scale. R.S.O. 1980, c. 268, s. 149.

Form of decision

117.—(1) Except where inapplicable, the decision of the Commissioner shall be in the form of an order or judgment but need not show upon its face that any proceeding or notice was had or given or that any circumstances existed necessary to give jurisdiction to make the order or judgment.

Document to be filed and recorded

(2) The order or judgment of the Commissioner, with the exhibits, the statement, if any, of view or of special knowledge or skills and the reasons for his decision shall be filed in the recording office and the recorder shall forthwith record and give notice of the filing to the solicitors of the parties appearing by solicitor and to parties not represented by a solicitor. R.S.O. 1980, c. 268, s. 150, *amended*.

Stay of proceedings

R.S.O. 1980, c. 484

118. Where a certified copy of a decision of a recorder has been filed in the office of the Registrar of the Supreme Court under section 19 of the *Statutory Powers Procedure Act*, the Commissioner or the court or a judge thereof may stay proceedings therein if an appeal from the decision is brought until final disposition of the appeal. R.S.O. 1980, c. 268, s. 153.

Appeal to Divisional Court

119. Where not otherwise provided, an appeal lies to the Divisional Court from any decision of the Commissioner, including an order dismissing a matter or proceeding under section 110. R.S.O. 1980, c. 268, s. 154.

Time for appeal

R.S.O. 1980, c. 25

120.—(1) Except in the case of a reference under section 97 or the *Arbitrations Act*, the order or judgment of the Commissioner is final unless where an appeal lies, it is appealed from within fifteen days after the recording thereof in accordance with section 117 or within such further period of not more than fifteen days as the Commissioner or a judge of the Divisional Court may allow.

Notice of appeal

(2) An appeal shall be begun by filing a notice of appeal with the recorder with whom the order or judgment appealed from is filed under section 117 or, where Part III applies, with the district manager paying to him the prescribed fee and filing the notice of appeal with the Registrar of the Supreme Court and, unless the notice of appeal is filed with the Registrar of the Supreme Court and a certificate of the filing is filed with the recorder or district manager within five days after the expira-

tion of such fifteen days or any further time allowed under subsection (1), the appeal shall be deemed to be abandoned.

Transmission of documents

(3) The recorder or the district manager, as the case may be, shall, forthwith after the filing of the notice of appeal and receipt of the prescribed fee, transmit to the office of the Registrar of the Supreme Court, Toronto, the order or judgment appealed from and all the exhibits, papers and documents filed therewith.

Extension order

(4) Where the time for appealing is extended under subsection (1), the appellant shall forthwith transmit the order for the extension or a duplicate thereof by registered mail to the recording office or to the office of the district manager, as the case may be.

Practice

(5) The practice and procedure on an appeal, including the form of notice of appeal, service of the notice of appeal on the parties and the disposition of costs on an appeal, shall be governed by the rules of court. R.S.O. 1980, c. 268, s. 155, *amended*.

Judicial review R.S.O. 1980, c. 224

121.—(1) No proceedings by way of an application for judicial review under the *Judicial Review Procedure Act* or, except in proceedings provided for under this Act, by way of other proceedings, may be brought to call into question,

(a) any decision made or purporting to have been made by a recorder under this Act more than thirty days after the recording of his decision in the records;

(b) any order or judgment made or purporting to have been made by the Commissioner under this Act more than thirty days after filing of the order or judgment in accordance with section 117; or

(c) the validity of any act done or purporting to have been done under this Act by the recorder or by any other officer appointed under this Act more than thirty days after the time when the act was done.

No extension of time

(2) Notwithstanding anything in the *Judicial Review Procedure Act*, no court may extend any limitation of time fixed in subsection (1). R.S.O. 1980, c. 268, s. 156.

Defect of form

122. Where the validity of a proceeding before the Commissioner or a recorder is called into question in any court on the ground of any defect of form or substance or failure to comply with this Act or the regulations, notwithstanding that the defect or failure is established, the court shall not, if no

substantial wrong or injustice has occurred, invalidate the proceeding by reason thereof but shall confirm the proceeding and, upon such confirmation, the proceeding shall be deemed to have been effective from the time when it would otherwise have been effective but for the defect or failure. R.S.O. 1980, c. 268, s. 157.

Application

123.—(1) This section applies to all patented and unpatented land and "land" in this section includes any right or interest in land.

Rights over other lands that may be conferred by Commissioner

(2) After hearing such parties as are interested, the Commissioner may make an order vesting in an owner, lessee, permittee, holder of mining rights or person entitled to work mining rights, where it is required for mineral exploration or in connection with the proper working of a mine, mill for treating ore or quarry,

(a) the right to open, construct, put in, maintain and use ditches, tunnels, adits, pipes, conduits, flumes and other works through, over or upon any land for the drainage, conveyance or passage of water;

(b) the right to discharge water upon any land or by, through or into any existing means of drainage, whether natural or artificial;

(c) the right to drain off, lower or divert the water of any lake, pond, river, stream, watercourse or any other water notwithstanding that the water or part thereof may be on the land of or owned by any other person or that any other person may have rights or interests in or to such water or the use thereof;

(d) the right to collect and dam water notwithstanding that it may overflow other land;

(e) the right to make or divert and use for or in connection with the working of his own mine or quarry and bring thereto for such use any specified water and to construct and maintain dams and other works and do all other things necessary or convenient therefor;

(f) rights-of-way or passage through or over any land or water and the right to construct, improve, maintain and use suitable roads, tramways, aerial tramways, channels, waterways, passages and other means of transit and transportation upon, through or over any land or water together with such other rights of entry

upon and use of land and water as may be necessary or convenient therefor;

(g) the right to transmit electricity or any other kind of power or have it transmitted, through or over any land or water in any form or manner and to do everything necessary or convenient therefor;

(h) the right to enter on and use for or in connection with the working of his own mine, sand and gravel pit or quarry a specified area of other land; and

(i) the right to deposit tailings, slimes or other waste products upon any land or to discharge them into any water, if the effects of such deposit or discharge is not injurious to health.

Notice of hearing

(3) Notice of hearing of all applications under this section shall be given to the Minister, the Minister of Labour and the Minister of the Environment in the same manner as notice to any other interested person.

Compensation for damage

(4) No right shall be granted under subsection (2) unless,

(a) any damage caused thereby can be adequately compensated for;

(b) in all the circumstances it seems reasonable to grant the right;

(c) where damage has been suffered, compensation has been determined by the Commissioner and paid; and

(d) in the exercise of any right granted no unnecessary damage shall be done to the land of other persons.

Determining rate of compensation

(5) Every order granting a right under subsection (2) shall fix appropriate compensation or provide for the ascertainment thereof and shall contain such provisions as are considered proper for securing and protecting the rights and interests of every person whose land is affected and may require the applicant to make grants or concessions to such person or construct works or do any act and the order may be made subject to such conditions as are considered proper.

Material to be filed on application

(6) Every applicant for an order under subsection (2) must file, in duplicate, with the Commissioner,

(a) a clear and precise statement of the rights applied for, the land affected and the owner thereof so far as can be ascertained;

(b) a map or plan of the locality showing the land and water involved; and

(c) definite and detailed plans and specifications of the works or things proposed to be constructed or done.

Authority to enter land

(7) The Commissioner may authorize an applicant for an order under subsection (2), his engineers and assistants to enter on the land of any other person to make such examinations and measurements as may be necessary for the purpose of subsection (6).

Amending plans, etc.

(8) Any statement, map or plan may be amended, altered or modified at any stage of the proceedings pursuant to an order of the Commissioner.

Notice

(9) When making an order under subsection (7), the Commissioner may give directions as to the notice to be given to the parties interested, the time and manner of service and the particulars to be furnished to such parties.

Order binding on subsequent owner

(10) A person acquiring land affected by an order made under this section is bound by the order and is entitled to any benefits given and is liable for any obligations imposed by the order to the same extent as if he were the owner of the land at the time the order was made.

Idem

(11) Subsection (10) applies in respect of land granted or disposed of by the Crown or sold by a municipality for unpaid taxes.

Description and plan of lands in order

(12) Every order made under this section shall contain a proper registrable description of all land affected together with a plan of that land.

Copy to be filed with Director, etc.

(13) A copy of every order made under this section, certified to be a true copy under the hand and seal of the Commissioner, shall be filed by the applicant with the Director and in the recording office and, if any patented land is thereby affected, a certified copy of the order shall be registered in the proper land registry office.

Particulars to be entered

(14) The recorder, Director or land registrar, as the case may be, shall record or enter particulars of every order filed under subsection (13) against the titles of the land thereby affected.

Where Director to send copy

(15) Where Crown land affected by an order made under this section is patented, a certified copy of the order shall be sent to the land registrar's office by the Director together with the grant or lease.

Failure to file

(16) An order made under this section is not valid against a purchaser for value without notice of patented land unless the order is registered against the title to the land.

Commissioner may change order

(17) The Commissioner, on such terms as he considers just, may, by subsequent order, at any time, vary or rescind any order made under this section.

Rights not to be exercised until after expiration of time for appeal

(18) Rights granted under this section shall not be exercised until the time for appealing from the order granting the rights has expired or, where an appeal is entered, until the appeal is disposed of. R.S.O. 1980, c. 268, s. 189, *amended*.

Proportionate contribution of work by co-holders

124.—(1) Each co-holder of a mining claim or exploratory licence of occupation shall contribute proportionately to his interest or, as the co-holders otherwise agree between themselves, to the cost of the assessment work required to be done, a survey, the first year's rent of a lease or the work requirements for an exploratory licence of occupation.

Vesting orders

(2) Where a co-holder does not meet his obligation under subsection (1), the Commissioner, upon the application of any co-holder and upon notice to and after hearing all persons interested or such of them as appear, may make an order vesting the interest of the defaulter in the other co-holders upon such terms and conditions and in such proportions as he considers just.

Interpretation

(3) In this section, "co-holder" means a person having any right, title or interest in a mining claim or an exploratory licence of occupation. R.S.O. 1980, c. 268, s. 90, *amended*.

Default in payment for work and vesting order

125. Where the holder of an interest in a mining claim has defaulted in payment for assessment work performed thereon by a person not the holder of an interest in the mining claim, the Commissioner, upon the application of the person who performed the work and upon notice to and after hearing all persons interested or such of them as appear, may make an order vesting the interest or any part of the interest in the mining claim of the defaulting holder in the person who performed the work. R.S.O. 1980, c. 268, s. 82, *amended*.

Procedure to enforce claim for payment of rent by one co-lessee against another

126.—(1) Where land or mining rights are held by co-lessees and the rent has been paid by some of them and the others have not paid their proportion of the rent for a period

of two consecutive years, the Commissioner, upon the application of any co-lessees who have paid the rent for the period of four consecutive years immediately prior to the date of the application and upon the receipt of the prescribed fee and such other information and particulars as he requires, may make an order requiring the delinquent co-lessees to pay, within three months after the date of the order or such further time as the Commissioner may fix, their proportion of the rent to the co-lessees who have paid all the rent together with interest at the prescribed rate compounded yearly and such costs of the application as are allowed by the Commissioner.

Dispute as to liability

(2) If a co-lessee who is served with an order made under subsection (1) disputes his liability to make any payment under the order or the amount thereof, he may, within the time limited by the order for making the payment, apply to the Commissioner for a hearing and the Commissioner shall hear and determine the dispute and affirm, amend or rescind the order or make such other order as he considers just and, if the Commissioner orders that a payment be made, he may fix the time for payment.

Vesting order

(3) The Commissioner may make an order vesting the interest of a co-lessee in land or mining rights in co-lessees who have paid rent where the co-lessee has not paid in accordance with,

(a) an order made under subsection (1) and has not disputed under subsection (2); or

(b) an order made under subsection (2).

Corporation and shareholder are co-lessees

(4) For the purpose of making an application under this section, a corporation with share capital and a shareholder thereof are considered to be co-lessees.

Interpretation

(5) In this section, "co-lessee" includes a co-holder of a lease or a licence of occupation. R.S.O. 1980, c. 268, s. 196, *amended*.

Procedure to enforce claim for payment of tax by one co-owner against another

127.—(1) Where land subject to mining land tax is held by co-owners and the tax has been paid by some of them and the others have not paid their proportion of the tax for a period of two years, the Commissioner, upon the application of any co-owners who have paid the tax for the period of two consecutive years immediately prior to the date of the application and upon the receipt of the prescribed fee and such other information and particulars as he requires, may make an order requiring the delinquent co-owners to pay, within three months after the date of the order or such further time as the Commissioner may fix, their proportion of the tax to the co-owners who have

paid all the tax together with interest at the prescribed rate compounded yearly and such costs of the application as are allowed by the Commissioner.

Dispute as to liability

(2) If a co-owner who is served with an order under subsection (1) disputes his liability to make any payment under the order or the amount thereof, he may, within the time limited by the order for making the payment, apply to the Commissioner for a hearing and the Commissioner shall hear and determine the dispute and affirm, amend or rescind the order or make such other order as he considers just and, if the Commissioner orders that a payment be made, he may fix the time for payment.

Vesting order

(3) The Commissioner may make an order vesting the interest of a co-owner in land or mining rights in co-owners who have paid taxes in accordance with,

(a) an order made under subsection (1) and has not disputed under subsection (2); or

(b) an order made under subsection (2).

Interpretation

(4) For the purpose of this section, a corporation with share capital and shareholders thereof are considered to be co-owners. R.S.O. 1980, c. 268, s. 211, *amended*.

Service of order

128.—(1) An order made under section 126 or 127 shall be served in such manner as the Commissioner directs.

Order against corporation

(2) An order made under section 126 or 127 requiring the payment of rent or tax by a corporation shall be made against the corporation only.

Death of delinquent

(3) Where a delinquent co-lessee within the meaning of section 126 or co-owner within the meaning of section 127 dies before or after default of payment in respect of his proportion of the rent or tax and no person has taken out administration of his estate or has obtained probate of his will, any order made under section 126 or 127 may be directed to and served upon his heirs. *New*.

PART V

INACTIVE MINE HAZARDS

Interpretation

129.—(1) In this Part,

(a) "district mine inspector" means a person designated by the Minister as a district mine inspector;

(b) "professional engineer" means a person registered as a professional engineer or licensed as a professional engineer under the *Professional Engineers Act*;

R.S.O. 1980, c. 394

(c) "registered" means,

(i) in the case of patented lands, registered under the *Land Titles Act* or the *Registry Act*, or

R.S.O. 1980, cc. 230, 445

(ii) in the case of lands held under a licence of occupation, deposited at the office of the Director,

and "register" has the corresponding meaning.

Powers of Minister and district mine inspector

(2) For the purpose of carrying out his duties and exercising his powers under this Part, the Minister or any person appointed, in writing, by him for the purpose, or a district mine inspector may,

(a) enter in or on any land or business premises at any reasonable time without notice or warrant;

(b) make such investigations as he considers necessary in order to determine the nature and extent of any existing or potential hazards;

(c) require the production of any drawings, specifications, licence, document, record or report and inspect, examine and copy the same;

(d) upon giving a receipt therefor, remove any drawing, specifications, licence, document, record or report inspected or examined for the purpose of making copies thereof or extracts therefrom, and upon making copies thereof or extracts therefrom, shall promptly return them to the person who produced or furnished them;

(e) in any inspection, examination, inquiry or test, be accompanied and assisted by or take with him any persons having special, expert or professional knowledge of any matter, take photographs and take with him and use any equipment or materials required for the purpose; and

(f) authorize entry in or on any land or business premises without warrant by any person or persons for the purpose of performing work ordered in accordance with section 130.

Idem

(3) The Minister or any person appointed, in writing, by him for the purpose or a district mine inspector may enter a dwelling or that part of a dwelling actually being used as a business premises only with the consent of the occupier or under the authority of a search warrant issued under section 142 of the *Provincial Offences Act. New.* R.S.O. 1980, c. 400

Interpretation

130.—(1) In this section, "owner" includes every person registered as,

(a) the owner in fee simple;

(b) the lessee under a leasehold patent; and

(c) the holder of a licence of occupation issued by the Minister under this Act,

of any land, in, on or under which is situate a mine or any part thereof, except surface rights that have been severed therefrom or dealt with separately.

Designation of inactive mine

(2) Where, in the opinion of the Minister, the operation of a mine is discontinued, he may designate the mine as an inactive mine and shall register notice of his designation.

Notice to owner

(3) Where the Minister designates a mine as an inactive mine, he shall serve notice of the designation on the owner of the mine.

Direction to perform protective measures

(4) A district mine inspector may by an order direct the owner of an inactive mine to take the protective measures specified in the order within a specified period.

Duty of owner of inactive mine

(5) Every owner of an inactive mine who has been served with an order under subsection (4), shall ensure that the order is complied with.

Time of taking effect if hearing

(6) Where a notice has been served under subsection (8), subsection (5) does not apply until the designation by the Minister is confirmed by the Commissioner.

Certificate

(7) Where the protective measures required under this section are done, the Minister, on the request of the owner of the inactive mine, shall provide a certificate stating that the requirements of this section have been complied with to the date of the certificate and the owner may register the certificate.

Notice requiring a hearing

(8) An owner of a mine that is declared inactive is entitled to a hearing by the Commissioner if he serves the Commissioner

and Minister with notice, within thirty days after being served a notice under subsection (3), that he requires a hearing in respect of the designation.

Hearing

(9) Where notice is served under subsection (8), the Commissioner shall hold a hearing and the owner of the inactive mine and the Minister are parties to the proceeding.

Examination of documentary evidence

(10) Where the Commissioner holds a hearing under this section, the owner of the inactive mine may examine, before the hearing, any written evidence that will be produced and any report, the contents of which will be given in evidence at the hearing.

Decision by Commissioner

(11) The Commissioner, at the conclusion of a hearing under this section, shall confirm or rescind the designation made by the Minister under subsection (2) and shall send a copy of his decision to each party to the proceeding.

Designation void

(12) Where the Commissioner rescinds a designation of the Minister, the Minister shall register the rescission and thereupon the designation made by the Minister is revoked.

Minister may cause protective measures to be performed

(13) Where an order under subsection (4) is not complied with, the Minister may cause the required protective measures to be taken and shall pay the cost incurred.

Protective measures for immediate hazards

(14) Where, in the opinion of a district mine inspector, an inactive mine constitutes an immediate hazard to persons or property, the district mine inspector may take such protective measures as he considers necessary and pay the costs incurred.

Lien

(15) Costs paid under subsection (13) or (14), including interest thereon at the prescribed rate, are a lien upon the inactive mine including all land, mineral rights and surface rights used therefor and all other land, mining rights and surface rights owned by the owner of the inactive mine contiguous thereto and the Minister may register notice of the lien.

Idem

(16) The Minister, on such terms as he considers proper, may register,

(a) a postponement of lien and upon registration, the lien is suspended for the period and in accordance with the conditions therein described; or

(b) a cessation of lien.

Recovery of cost

(17) Costs paid under subsection (13) or (14) including interest thereon at the prescribed rate, are a debt due to the Crown

by the owner of the inactive mine and are recoverable by the Crown in any court of competent jurisdiction.

Prohibition

(18) No person shall remove or alter any protective measures taken in accordance with this section except with the prior written consent of the Minister.

Additional protective measures

(19) Where at any time protective measures taken under this section are no longer adequate or appropriate to prevent a hazard to persons or property in respect of the inactive mine, a district mine inspector may make such further order as he considers necessary.

Declaration revocable

(20) The Minister may revoke a designation made under subsection (2) and, if he does so, shall register the revocation.

Interpretation

(21) In this section, "lien" includes a lien created under section 161 of the *Mining Act*, being chapter 268 of the Revised Statutes of Ontario, 1980, or a predecessor of that section. R.S.O. 1980, c. 268, s. 161, *amended*.

Designation as limited use land

131.—(1) The Minister may designate any land as limited use land where, in his opinion, use of the land for purposes other than mining is potentially hazardous.

Notice of proposal to designate

(2) Where the Minister proposes to designate land as limited use land, he shall serve notice of his proposal on the person appearing in the records of the land registry office as the owner and shall register in the land registry office notice of his proposed designation.

Notice requiring hearing

(3) An owner of land that the Minister proposes to designate under subsection (1) is entitled to a hearing by the Commissioner if he serves the Commissioner and Minister with notice, within thirty days after being served a notice under subsection (2), that he requires a hearing in respect of the designation.

Minister may designate if no hearing required

(4) If a notice requiring a hearing is not served as set out in subsection (3), the Minister may designate the land as limited use land and register the designation in the proper land registry office.

Subsequent right to object and require a hearing

(5) Where a designation is made under subsection (4), the owner of the land involved may, at any time, require a hearing by serving the Commissioner and Minister with notice to that effect.

Approved studies and tests

(6) An owner who requires a hearing under subsection (3) or (5) may submit to the Minister a plan for the performance of studies and tests to determine the existence and exact location

of mine workings underlying the land and the condition of the rock between the mine workings and the surface and, if the Minister approves, may carry out the studies and tests at the owner's expense.

Determination by Minister

(7) Where, on the basis of studies and tests done under subsection (6), the Minister determines that the land should not be designated as limited use land, he shall register in the proper land registry office revocation of the notice of designation.

Reimbursement for costs

(8) Where the Minister determines, as a result of studies and tests done under subsection (6), that the land should not be designated as limited use land, he shall reimburse the owner for the costs of the studies and tests.

No hearing by Commissioner

(9) Where the Minister makes a determination under subsection (7), he shall so notify the Commissioner.

Hearing

(10) Where an owner serves notice under subsection (3) or (5), the Commissioner shall hold a hearing unless he is notified under subsection (9) and the owner and the Minister are parties to the proceeding.

Opportunity to examine evidence

(11) Where the Commissioner holds a hearing under this section, the owner of the land involved may examine, before the hearing, any written evidence that will be produced and any report, the contents of which will be given in evidence at the hearing.

Decision by Commissioner

(12) Where the Commissioner, after a hearing under this section, makes a decision, he shall send a copy of his decision to each party to the proceeding.

Registration of revocation

(13) Upon the Minister being notified that the Commissioner decided that land should not be designated as limited use land, the Minister shall register in the proper land registry office revocation of the notice of designation and shall reimburse the owner for the costs of any studies and tests, the results of which were presented at the hearing.

Designation by Minister

(14) Upon the Minister being notified that the Commissioner decided that land should be designated as limited use land, the Minister may designate the land as limited use land and shall register the designation in the proper land registry office.

Prior written approval of Minister

(15) No owner of land designated as limited use land shall cause or allow,

(a) any change in the existing use of the land;

(b) any addition to an existing structure or building located on the land; or

(c) the construction of a structure or building on the land,

without the prior written approval of the Minister.

Minister may require reports

(16) Where the Minister receives a request for approval under subsection (15), he may require such reports as he considers necessary, including a report from a professional engineer, setting out such particulars as he needs to make a decision.

Revocation of designation

(17) Where, in the opinion of the Minister, a designation of land as limited use land made under this section is no longer justified or appropriate, the Minister shall revoke the designation and register the revocation in the proper land registry office.

Use of information obtained under Act

(18) For the purpose of this section, the Minister may use any relevant information obtained from a mine plan submitted at any time under any provision of this Act or a predecessor thereof.

Interpretation

(19) In this section, "owner" includes the lessee or occupier of any land that is or may be designated as limited use land. *New*.

Designation not regulation under R.S.O.1980, c. 446

132. A designation under section 130 or 131 is not a regulation under the *Regulations Act*. *New*.

PART VI

MINING LAND TAX

Interpretation

133. In this Part,

(a) "municipality" means a city, town, village, township or county, the inhabitants of which are a body corporate within the meaning and for the purposes of the *Municipal Act* and includes an improvement district, district municipality and regional municipality and The Municipality of Metropolitan Toronto; R.S.O. 1980, c. 302

(b) "tax" means a tax on land or mining rights. R.S.O. 1980, c. 268, s. 201, *amended*.

Liability for tax

134.—(1) Except as provided in this Part,

(a) all land in territory without municipal organization granted for mining purposes;

(b) all land in territory without municipal organization being held or used for mining purposes;

(c) all mining rights in, on or under land in a municipality granted for mining purposes;

(d) all mining rights in, on or under land in a municipality and being held or used for mining purposes; and

(e) all mining rights that are severed from the surface rights,

are subject to tax and the owner thereof shall pay the prescribed annual tax on or before the fifteenth day of March in the year in which it is imposed.

Exemption from tax

(2) No tax is payable in respect of mining land or mining rights held under a lease granted by the Crown. R.S.O. 1980, c. 268, s. 204, *amended*.

Exemptions from tax by Minister

135.—(1) The Minister may exempt land or mining rights from the tax under this Part where,

(a) land is subdivided by a registered plan or reference plan into lots or parcels for city, town, village or summer resort purposes;

(b) land is being used for a public park or cemetery or educational or religious purposes; or

(c) land is in *bona fide* use for farming or other agricultural purposes,

and there is no severance of surface and mining rights, or,

(d) the mining rights in, on or under any land situated south of the French River, Lake Nipissing and the Mattawa River, including the Territorial District of Manitoulin, are being held, used or developed solely for the production of natural gas or petroleum. R.S.O. 1980, c. 268, s. 205 (1), *amended*.

Idem

(2) Where the mining rights that were not subject to tax under this Part become subject to tax because the surface rights thereof have been severed from the mining rights for a public road, highway or public utility, the Minister may exempt the mining rights so severed from the tax during such time as he is

satisfied that the mining rights are not being used or held for mining purposes. R.S.O. 1980, c. 268, s. 218 (2), *amended*.

Where mining rights taxable only

(3) Where the Minister is satisfied that the surface rights of mining land are being used for purposes other than that of mining or the mining industry, he may exempt the surface rights from the tax. R.S.O. 1980, c. 268, s. 206, *amended*.

Decision of Minister final

(4) An exemption by the Minister under this section is final. R.S.O. 1980, c. 268, s. 205 (2).

Preparation of tax roll

136. The Minister shall have an annual tax roll prepared showing the land and mining rights subject to tax under this Part and the persons liable to the tax. R.S.O. 1980, c. 268, s. 207, *amended*.

Registration of notice of liability and forfeiture

137. The Minister may register in the proper land registry office a notice of liability to taxation and forfeiture in respect of any mining land or mining rights subject to the tax. R.S.O. 1980, c. 268, s. 208, *amended*.

Liability for tax though not on roll

138. Every person liable to the tax under this Part is liable without notice or demand notwithstanding that the person or his land or mining rights are not shown on the tax roll prepared under section 136. R.S.O. 1980, c. 268, s. 209, *amended*.

Commissioner may settle dispute

139.—(1) Any person claiming an interest in any land or mining rights or whose name is entered on the tax roll as being liable to tax or who disputes the amount of tax levied in respect of land or mining rights in which he has an interest, may apply to the Commissioner to determine whether he is liable to the tax or for the amount of tax levied.

Omission from tax roll

(2) The Minister may refer to the Commissioner for hearing and adjudication any question as to whether any land or mining rights are or any person is wrongfully omitted from the tax roll.

Minister to be party

(3) The Minister is a party to any proceedings before the Commissioner under this section. R.S.O. 1980, c. 268, s. 210, *amended*.

Penalty for default

140. Where tax is unpaid on the first day of April in the year in which it is payable, a penalty at the prescribed rate shall be added thereto, accumulating annually thereafter on any part that remains unpaid and, for all purposes, the amount of the tax and penalty are considered to be the tax due and payable under this Part. R.S.O. 1980, c. 268, s. 215, *amended*.

Special lien and priority of the tax

141.—(1) All tax, penalties and costs payable under this Part constitute a special lien on the land or mining rights against which the tax is levied in priority to every claim, privilege, lien or encumbrance of any person, whether the right of that person has accrued before or after the attaching of the special lien.

Idem

(2) The priority of a special lien is not lost by any omission, error or failure to register.

Realization of lien

(3) A special lien may be realized by action for sale of any or all property subject to it. R.S.O. 1980, c. 268, s. 216, *amended*.

Right of action

142. If an owner of any land or mining rights fails to pay the tax on his land or mining rights when due, the Minister may bring action in any court of competent jurisdiction for the recovery of the tax together with penalties and costs. R.S.O. 1980, c. 268, s. 217, *amended*.

Notice of tax arrears

143.—(1) Where taxes in respect of land or mining rights are two years in arrears, the Minister may send notice to every person who appears, from the proper land registry office records, to have an interest in the land or rights, addressed to that person at the address shown for that person in the land registry office records or such latter address as is known to the Minister.

Liability for cost

(2) A person who receives a notice under subsection (1) is liable, in addition to taxes and penalties, to a prescribed cost.

Declaration of forfeiture

(3) Where any taxes, penalties or costs remain unpaid six months after the sending of notice under subsection (1), the Minister may order the land or mining rights in respect of which the default exists forfeited.

Registration of certificate

(4) Upon a certificate of forfeiture being registered pursuant to an order made under subsection (3), the land or mining rights described in the certificate are forfeited to and vested in the Crown free of every interest or claim.

Registration conclusive

(5) Registration of a certificate of forfeiture is conclusive evidence of the forfeiture to and vesting in the Crown of the land or mining rights described therein notwithstanding any defect or omission.

R.S.O.1980, cc. 445, 230 do not apply

(6) Upon registration of the certificate of forfeiture, the *Registry Act* or the *Land Titles Act*, as the case may be, ceases to apply to the land or mining rights forfeited and the land registrar shall note that fact in his register.

Not open for staking

(7) Except as provided in subsection (8), land and mining rights forfeited under this section are not open for prospecting or staking.

Opening forfeited land

(8) The Minister may publish in *The Ontario Gazette*, a list of land and mining rights forfeited to the Crown under this section with a declaration that they are open for prospecting or staking at or after the time specified and subsection (7) ceases to apply in respect of those lands or mining rights after the specified time. R.S.O. 1980, c. 268, s. 212, *amended*.

Application for revocation of forfeiture

144.—(1) Any person may apply, upon payment of the prescribed fee, to the Minister for an order revoking a forfeiture under this Part.

Withdrawal of land or mining rights from prospecting, etc.

(2) Where application is made under subsection (1), the Minister may direct the land or mining rights described in the application to be withdrawn from prospecting, staking, sale or lease until the disposition of the application.

Order

(3) The Minister may by order revoke the forfeiture of any land or mining rights.

Registration of order

(4) Where an order is made under subsection (3), the Minister shall register the order in the proper land registry office.

Effect of registration

(5) Upon an order being registered under subsection (4), subsection 143 (6) ceases to apply to the land or mining rights described in the order and all rights, interests and claims in respect of the land or mining rights are reinstated as if a certificate of forfeiture had not been registered. R.S.O. 1980, c. 268, s. 214, *amended*.

Right to search land registry office free of charge

145. Any person authorized by the Minister in writing may, for the purpose of ascertaining the names and addresses of owners of land or mining rights, search and inspect documents in land registry offices free of charge. R.S.O. 1980, c. 268, s. 213.

Lands and easements revert to Crown

146. Where under this Part or section 75, 153 or 159 a dominant tenement reverts to and becomes vested in the Crown, any easement appurtenant thereto passes to the Crown and, where a servient tenement reverts to and becomes vested in the Crown, any easement to which the servient tenement is subject is not affected. R.S.O. 1980, c. 268, s. 219.

Arrears under previous Act

147. Any arrears of acreage tax, penalties and costs under any predecessor of this Act are arrears of tax for the purpose of this Part. *New*.

PART VII

GENERAL PROVISIONS

MISCELLANEOUS PROVISIONS

Power to extend time for any act

148. Where power is conferred by this Act upon the recorder or Commissioner to extend the time for doing an act, the power may be exercised as well after as before the expiration of the time allowed for doing the act. R.S.O. 1980, c. 268, s. 158.

Time expiring on a Saturday

149. Where time limited for doing anything in a recording office or an office of a district manager, the Commissioner or the Minister expires or falls on a Saturday, the time so limited extends to and the thing may be done on the day next following that is not a holiday or a Saturday. R.S.O. 1980, c. 268, s. 159, *amended*.

Lands and mining rights to be withdrawn from exploration on repeal of patent or lease at instance of Crown

150. Where a patent of mining land or mining rights is by decision in the Supreme Court at the instance of the Crown repealed, the land and mining rights thereupon are withdrawn from prospecting, staking, lease or sale, and every interest or claim to the land or mining rights and to the mines or minerals on, in or under the land existing at any time before the repeal of the patent are void and the land, mining rights, mines and minerals are thereupon vested in the Crown free from every claim. R.S.O. 1980, c. 268, s. 194.

Transmission of energy in mining division and entering on land without owner's consent

151. With the consent of the Lieutenant Governor in Council and on such terms as he sees fit, any company authorized to supply electrical power or energy or compressed air may construct, maintain and operate transmission lines, air pipe lines, substations and other conveniences for the transmission of electrical power or energy or compressed air in and through any mining division and, for any of such purposes, may enter on, take and use any mining land or any privilege or easement required by the company for such purposes without the consent of the owner thereof, but subject to the payment of such compensation or rent as is determined by the Lieutenant Governor in Council, and the Lieutenant Governor in Council may revoke or vary the terms upon which any right conferred under this section may be exercised. R.S.O. 1980, c. 268, s. 191.

NATURAL GAS AND PETROLEUM

Rent and royalties

152.—(1) The rent and royalties payable under a lease to produce natural gas and petroleum from Crown lands lying south and east of the River Mattawa, Lake Nipissing and the

French River issued for the first time or renewed on or after the 1st day of January, 1981 shall be the rent and royalties prescribed and not as set out in the lease.

Regulations

(2) The Lieutenant Governor in Council may make regulations prescribing rent and royalties payable under leases referred to in subsection (1) and any regulations made under this section may have retroactive effect. *New*.

LIEN FOR WAGES

Application of 1983, c. 6

153.—(1) Notwithstanding section 94, the *Construction Lien Act, 1983* applies to mines, mining claims, mining land and works connected therewith.

Registration of lien with recorder

(2) Where the mining rights in Crown land are recorded as a mining claim the registration provided for in the *Construction Lien Act, 1983* shall be in the recording office.

Registration of lien with Director

(3) Where a licence of occupation for mining rights has been issued under section 78 or an exploratory licence of occupation has been issued under section 76, the registration provided for in the *Construction Lien Act, 1983* shall be in the office of the Director.

Lien where action for wages

(4) Where the action is for wages in connection with a mine, mining land, mining claim or works connected therewith, in addition to the rights and remedies afforded by the *Construction Lien Act, 1983*, the claimant has a lien on any other property of the owner or holder of the mine, mining land, mining claim or works for a sum not exceeding thirty days wages and this claim may be enforced under this Act.

Cancellation of lien

(5) Where the Commissioner is satisfied that an action for lien recorded under subsection (2) or (3) is not made in good faith or is made for some improper purpose or where the owner or holder is unduly embarrassed thereby, he may make an order cancelling the lien upon such terms as to security as he considers proper.

Rights of Crown

(6) A lien on unpatented land does not affect the rights of the Crown. R.S.O. 1980, c. 268, s. 185, *amended*.

SURRENDER, TERMINATION OR FORFEITURE

Voluntary surrender of mining lands, mining rights or surface rights

154. The owner, lessee or licensee of any land or mining rights may, with the consent of the Minister, voluntarily surrender the land or only the mining rights or surface rights thereof to the Crown and thereupon the Minister shall register

a notice in the proper land registry office. R.S.O. 1980, c. 268, s. 198, *amended*.

Termination of leases or licences of occupation

155. Where payments of rent under a lease issued under this Act or a predecessor thereof or fees under a licence of occupation are in arrears for two years, the lease or licence of occupation may be terminated by an instrument in writing. R.S.O. 1980, c. 268, s. 94 (11).

Opening mining rights for prospecting, staking or disposition

156. Mining rights surrendered under section 154 or terminated under section 155 are thereby vested in the Crown and are not open for prospecting, staking or disposition under this Act until a date fixed by the Minister and published in *The Ontario Gazette*. *New*.

Notice of termination of lease and registration thereof

157.—(1) Where application for renewal of a lease issued under this Act or a predecessor thereof is not made within the time prescribed, a renewal of a lease is refused or a lease has been terminated, the Minister may register a notice of termination in the proper land registry office, and thereupon all the rights and interests of the lessee cease and the mining land or mining rights described in the lease vest in the Crown free from every interest therein.

Effect of registration of notice of termination

R.S.O. 1980, cc. 230, 445

(2) Upon registration of the notice of termination of a lease in the proper land registry office, the *Land Titles Act* or the *Registry Act*, as the case may be, ceases to apply to the land, and the registrar shall note that fact in his register.

Opening mining rights for prospecting, etc.

(3) When a notice of termination is registered under subsection (1), the mining rights are not open for prospecting, staking or disposition until a date fixed by the Minister is published in *The Ontario Gazette*. R.S.O. 1980, c. 268, s. 94 (12-14), *amended*.

Reinstatement of lease

158. Where a lease of mining rights has been terminated before the normal date of expiry, the lessee may apply to the Minister to have the lease reinstated and, if there is nothing filed indicating an adverse interest, the Lieutenant Governor in Council, upon the recommendation of the Minister, may by order cancel the termination and the Minister shall register the order in the proper land registry office and thereupon the lease is reinstated subject to any outstanding lien or charge entered or registered prior to the termination. *New*.

Lease or licence of occupation void where land used other than for mining purposes

159. The mining land, surface rights or mining rights held under a lease issued under a predecessor of this Act or mining rights held under a lease or licence of occupation issued under this Act shall be used solely for mining purposes and, in default thereof and on the recommendation of the Minister,

the Lieutenant Governor in Council may terminate the lease or licence of occupation, as the case may be. R.S.O. 1980, c. 268, s. 98, *amended*.

Land forfeited to Crown

160.—(1) Where a corporation is dissolved, all mining land or mining rights of the corporation that have not been disposed of at the date of its dissolution and every interest therein are, notwithstanding anything in any other Act, thereupon forfeited to the Crown, free from every right, title, interest or claim therein or thereto.

Idem

(2) Mining land and mining rights that forfeited to the Crown under any other Act before this Act comes into force vest in the Crown free from every right, title, interest or claim therein or thereto.

Opening mining rights for prospecting, staking or disposition

(3) Mining land or mining rights forfeited to the Crown are not open for prospecting, staking or disposition until a date fixed by the Minister is published in *The Ontario Gazette*. R.S.O. 1980, c. 268, s. 199, *amended*.

Administration of surrendered, terminated or forfeited land

161. Where mining land or mining rights revert or are surrendered or forfeited under this Act, the land or rights may be dealt with under any Act administered by the Minister and the regulations made thereunder. R.S.O. 1980, c. 268, s. 195, *amended*.

RECTIFICATION OF TITLE

Cancellation of erroneous title

162.—(1) Where an instrument conveying an interest in land is issued to or in the name of the wrong person or contains a clerical error or a wrong description of land or rights intended to be granted, the Minister, if there is nothing filed to indicate an adverse interest, may direct that a correct instrument be issued.

Effect of corrected title

(2) A corrected instrument issued under subsection (1) shall relate back to the date of the defective one. R.S.O. 1980, c. 268, s. 106, *amended*.

Annulled surveys

R.S.O. 1980, c. 413

163.—(1) Where an instrument issued for mining land or conveying an interest in land is affected by an annulment under subsection 7 (1) of the *Public Lands Act*, the Minister shall issue a substituting instrument containing a revised description of the land in its stead.

Substitution of instrument title

(2) A substituting instrument issued under subsection (1) shall relate back to the date of the original instrument. R.S.O. 1980, c. 268, s. 107, *amended*.

MINING RIGHTS UNDER ROADS

Sale or lease of mineral rights under roads

164.—(1) The corporation of any county or township in that part of Ontario lying south of the French River, Lake Nipissing and the River Mattawa, wherever minerals are found, may sell or lease the right to take minerals found on or under any road over which the township or county has jurisdiction.

No sale or lease until after notice

(2) No sale or lease under subsection (1) may take place until after notice of the intended by-law authorizing the sale or lease has been posted in six of the most public places in the immediate neighbourhood of the road for at least one month before the time set for considering the by-law.

In northern part of Province

(3) In the parts of Ontario not described in subsection (1), the mining rights in, on or under highways are vested in the Crown and may be disposed of under this Act.

Rights of adjoining landowners

(4) Where mining land adjoins a highway and the mineral vein or deposit thereon extends into or under the highway, its owner has the right to purchase or lease the mining rights in, on or under the highway subject to this Act or, where there are mining lands on both sides of a highway, the right to purchase or lease accrues to the owner on each side thereof in respect of the half of the highway adjoining his land.

Sale or lease not to interfere with public travel

(5) Every conveyance or lease under this section is subject to a condition protecting the road for public travel and preventing any use of the granted rights that would interfere with public travel or providing for a comparable substituted road acceptable to the municipal corporation having control of the road.

Exception

(6) Subsections (3) and (4) do not apply to highways on land granted before the 1st day of May, 1904 by the Crown under a predecessor of this Act or in the grant wherein the mines and minerals were not reserved to the Crown.

Previously acquired rights preserved

(7) This section shall not be construed so as to derogate from any rights acquired from or any agreement made with any municipal corporation under a predecessor of this section prior to the 1st day of May, 1904.

Interpretation

(8) In this section, "highway" includes road allowance. R.S.O. 1980, c. 268, s. 197, *amended*.

STATISTICAL RETURNS

Statistical returns

165.—(1) Every owner of a mine, plant, quarry or other works to which this Act applies shall, on or before the thirty-

first day of March in every year, send to the Minister, on forms supplied by the Ministry, a correct return for the year that ended on the thirty-first day of December immediately preceding, showing,

(a) the number of persons ordinarily employed below and above ground respectively;

(b) the total amount of wages paid during the year;

(c) the quantity, in standard weight, of the minerals processed and of the unprocessed mineral that has been sold, treated or used during the year and the value or estimated value thereof; and

(d) such other particulars as are prescribed.

Monthly or quarterly returns

(2) Every owner of a metalliferous mine shall, if required by the Minister, make a return for the month or quarter at the end of each month or quarter of the calendar year providing the information required under subsection (1).

False return

(3) Every owner, agent or manager of a mine, plant, quarry or other works who fails to comply with this section, or makes a return that is, to his knowledge, false in any particular, is guilty of an offence against this Act. R.S.O. 1980, c. 268, s. 163, *amended*.

LICENCES OF OCCUPATION AND LEASES ISSUED UNDER PREVIOUS ACTS

Application

166.—(1) The application of this section is limited to licences of occupation issued under section 52 of *The Mining Act*, being chapter 241 of the Revised Statutes of Ontario, 1960, or any predecessor thereof, and licences of occupation issued without provision for an annual payment.

Rates for licence of occupation

(2) Notwithstanding the provisions in any licence of occupation, the annual rental is $1 an acre with a minimum of $5 a year, payable in advance.

When annual rental to be paid

(3) Where any licence of occupation does not specify a date for the payment of the annual rental, the annual rental shall be paid on the anniversary date of the effective date of the licence.

Termination of licence of occupation

(4) Where payment of the rental under any licence of occupation is in arrears for two years, the licence may be terminated by an instrument in writing, signed by the Minister, and all rights and powers therein as well as all rights and claims of the licensee in or to the land covered by the licence cease but the

mining rights contained therein are not open for prospecting, staking or disposition until a date fixed by the Minister is published in *The Ontario Gazette*.

Reinstatement

(5) Where there is no adverse interest, the Minister may, upon such reservations and conditions as he considers proper, reinstate a licence terminated under subsection (4).

Consent to transfer of licence

(6) A licence may be transferred subject to the written consent of the Minister.

Conversion to lease

(7) The holder of a licence of occupation on application in writing therefor and on the surrender of his licence of occupation may be issued a lease. R.S.O. 1980, c. 268, s. 44, *amended*.

Interpretation —ten year leases

167.—(1) In this section, "lease" means a lease of surface and mining rights or of mining rights issued under section 47, 52 or 100 of *The Mining Act*, being chapter 241 of the Revised Statutes of Ontario, 1960, or a predecessor thereof, and includes a renewal of such a lease.

Rates for lease

(2) Notwithstanding any provision in a lease, the annual rent is $1 an acre with a minimum of $10, payable in advance.

Application

(3) Subsection (2) does not affect the rent payable under a lease for the balance of the term in effect on the day this section comes into force.

Renewal of lease

(4) Upon application therefor being made at least ninety days before the expiration of the lease or within such shorter time as the Minister, in the circumstances of the case, considers proper, a lease is renewable for a period of ten years and every renewal shall date from the day following the expiry of the lease.

Conversion of lease

(5) The holder of a lease, upon application in writing therefor and the surrender of his lease, may be issued a lease of mining rights under section 66 of this Act for a term of twenty-one years at a prescribed rent. R.S.O. 1980, c. 268, s. 95, *amended*.

Reservation of land to read as reservation of surface rights only

168. Where a patent has been issued under a predecessor of this Act containing a reservation for road purposes of 5 per cent or of 10 per cent of land granted and the Crown or its designate or agents did not occupy land under the reservation, prior to the 1st day of May, 1963, for laying out and constructing roads, the reservation shall be deemed to read as a reservation of 5 per cent of the surface rights or 10 per cent of the

surface rights, as the case may be. R.S.O. 1980, c. 268, s. 100 (4), *amended*.

Reservation of trees and right of entry

169.—(1) Every patent or lease of Crown land issued under this Act shall be deemed to contain a reservation to the Crown of,

(a) all timber and trees growing on the land granted or leased; and

(b) the right to enter on the land to carry on forestry, to cut and remove timber or trees thereon and to make necessary roads for those purposes.

Exercise of rights reserved

(2) The rights reserved in subsection (1) may be exercised by any person holding a licence or permit from the Crown when authorized to do so by the Minister.

Ownership of trees remains in Crown

(3) All timber and trees on Crown land that is staked out and recorded under this Act remain the property of the Crown and the Crown may enter on the land to carry on forestry, to cut and remove timber or trees thereon and to make necessary roads for those purposes.

Conditions under which holder, owner or lessee may cut trees

(4) Notwithstanding subsections (1) and (3) and subject to subsections (5) and (6), the holder of a mining claim staked on Crown land or the owner or lessee of land acquired under this Act may cut the trees on the land so staked or acquired as may be necessary for building, fencing or fuel purposes or for any other purpose necessary for the development or working of the minerals thereon.

Idem

(5) Where a licence or permit from the Crown to cut timber on land has not been granted, the holder, owner or lessee may, on application to the Minister, be granted permission to cut and use the trees for the purposes mentioned in subsection (4) either without payment or on such terms as the Minister imposes.

Idem

(6) Where a licence or permit from the Crown to cut timber on land has been granted, the recorded holder, owner or lessee shall compensate the timber licensee or permittee for the trees cut or used by him.

Determination of disputes

(7) Where a dispute arises between the holder, owner or lessee and the timber licensee or permittee as to the value or quantity of the trees cut or used under subsection (6), the Minister shall determine the dispute and his decision is final.

Holder, etc., of mining rights not to cut trees

(8) This section does not confer upon the holder, owner or lessee of the mining rights any right to cut trees for commercial purposes on the land on which he has staked or acquired only the mining rights. R.S.O. 1980, c. 268, s. 105.

REFINERY PROVISIONS

Interpretation

170. In sections 171 to 175, "refinery" means apparatus or equipment, including ancillary equipment, fluxes and reactants, that may be used for the refining, retorting, smelting, assaying or treating of ore, mineral, partially refined metal, alloy, metallic scrap, jewellery or other substance for the purpose of recovering therefrom or of determining the quantity therein of any precious metal. R.S.O. 1980, c. 268, s. 164, *amended*.

Powers of Minister as to refinery licences

171.—(1) The Minister may,

(a) issue and renew refinery licences and certificates of exemption;

(b) suspend or revoke a refinery licence or certificate of exemption where he considers it in the public interest to do so;

(c) prescribe the forms of refinery licences, certificates of exemption, applications therefor and renewals thereof; and

(d) prescribe the fee payable upon the issue and renewal of refinery licences and certificates of exemption.

Term of licence and certificate of exemption

(2) Every refinery licence and certificate of exemption expires on the thirty-first day of March next following the issue thereof. R.S.O. 1980, c. 268, s. 166, *amended*.

Certificate of exemption

172. A certificate of exemption may be issued in respect of a refinery where the Minister is satisfied that the refinery,

(a) is not maintained or used for the refining, retorting, smelting, assaying or treating of an ore, mineral or substance for the purpose of recovering therefrom or determining the quantity therein of any precious metal; or

(b) is used for educational purposes only. R.S.O. 1980, c. 268, s. 168 (1), *amended*.

Refinery licence

173.—(1) Subject to subsection (2), no person shall have a refinery in his possession or under his control or on property

of which he is the owner, licensee, lessee or tenant unless a refinery licence has been granted for the refinery.

When not required

(2) A refinery licence is not required for a refinery for which a certificate of exemption has been issued. R.S.O. 1980, c. 268, s. 165, *amended*.

Use of refinery

174. No person who has a refinery in respect of which a certificate of exemption has been issued under his control shall permit the refinery to be used for the refining, retorting, smelting, assaying or treating of an ore, mineral or substance for the purpose of recovering therefrom or determining the quantity therein of any precious metal. R.S.O. 1980, c. 268, s. 168 (2), *amended*.

Reference to Commissioner for hearing and report

175.—(1) Where the Minister proposes to refuse to renew or to suspend or revoke a refinery licence or certificate of exemption, he shall refer the matter to the Commissioner.

Hearing

(2) Where a matter is referred under subsection (1), the Commissioner shall hold a hearing as to whether the refinery licence or certificate of exemption to which the hearing relates should be renewed, suspended or revoked, as the case may be, and the licensee or certificate holder and such other persons as the Commissioner may specify are parties to the hearing.

Application of R.S.O. 1980, c. 484

(3) Sections 2, 6 to 16, 22 and 23 of the *Statutory Powers Procedure Act* apply in respect of a hearing under this section.

Report

(4) The Commissioner shall, after every hearing under this section, make a report to the Minister setting out,

(a) his findings of fact and all information or knowledge used by him in reaching his recommendations;

(b) any conclusions of law he has arrived at relevant to his recommendations; and

(c) his recommendations,

and shall send a copy of his report to the licensee or certificate holder to whom it relates.

Decision of Minister

(5) After considering a report made under this section, the Minister shall make his decision concerning the subject-matter of the report and shall notify the licensee or certificate holder of his decision and the reason therefor. R.S.O. 1980, c. 268, s. 167, *amended*.

Inquiry of charge

176. The Minister may ask the Commissioner to conduct an inquiry into a charge that a person has contravened a provision of section 173 or 174 and the Commissioner, for the purposes of the inquiry, has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the inquiry as if it were an inquiry under that Act. R.S.O. 1980, c. 268, s. 171, *amended*.

R.S.O. 1980, c. 411

PENDING PROCEEDINGS

Pending proceedings applicable

177.—(1) Where a proceeding under this Act is pending before a court or the Commissioner, the Director when informed by the court or the Commissioner, as the case may be, shall notify the recorder who shall,

(a) indicate on the record of the mining claim affected that a proceeding is pending and the recording thereof shall be the effective date; and

(b) serve the holder with notice of the action.

Idem

(2) Where a dispute is pending before the recorder or he wants to determine if the provisions of this Act and the regulations have been complied with in respect of a mining claim, he shall,

(a) indicate on the record of the mining claim affected that a proceeding is pending and the recording thereof shall be the effective date; and

(b) serve the holder with notice of the action.

Effect of pending proceedings

(3) Where it is indicated on the record of a mining claim that proceedings are pending, all requirements under this Act and all rights in respect of the claim are suspended.

Holder may perform work

(4) Notwithstanding subsection (3), the holder of a mining claim may, at his own risk, continue to perform and record assessment work.

Proceeding determined

(5) Where a proceeding under this Act that is pending before a court or the Commissioner has been determined, the Director or the Commissioner, as the case may be, shall notify the recorder of the outcome.

Effect of determination

(6) Where the recorder is notified that a proceeding is concluded or where a dispute before him or investigation by him is resolved or concluded, the recorder shall so indicate on the record of the mining claim affected.

(7) Upon a notation being made under subsection (6), subsection (3) ceases to apply. Effect of notation

(8) Where the record of a mining claim indicates that a proceeding that was pending is concluded or resolved, a new anniversary date for the mining claim, which date shall be determined by adding the time that subsection (3) applied to the previously recorded anniversary date, shall be established. New anniversary date

(9) Upon a new anniversary date being established, the recorder shall serve notice of the new date on the holder of the claim. Notice

(10) If the holder of a mining claim is unable to affix tags or to perform the required assessment work by the new anniversary date because of adverse weather conditions, the recorder may, on application of the holder, make an order extending the time for affixing tags or performing and recording assessment work for a period not longer than three months. *New*. Extension by recorder

GENERAL

178.—(1) Where the holder, licensee, lessee or owner of a mining claim, mining land or mining rights abandons or surrenders the claim, land or rights or where the mining claim, mining land or mining rights are cancelled or forfeited, he may take from the claim, land or rights any buildings, structures, machinery, chattels, personal property and, except in the case of an unpatented mining claim, any minerals he has extracted therefrom belonging to him and any slimes or tailings not otherwise owned, within six months after the abandonment, surrender, cancellation or forfeiture or within such further time as is fixed by the Commissioner, and, in default of so doing, all such buildings, structures, machinery, chattels, personal property, minerals, slimes and tailings are the property of the Crown. Where claim, lands or rights abandoned, etc.

(2) Land that vests in the Crown under subsection (1) is open to staking. Land open to staking

(3) The staking of a mining claim does not confer upon the licensee any right respecting buildings, structures, machinery, chattels or personal property acquired by the Crown under subsection (1). R.S.O. 1980, c. 268, s. 64, *amended*. Licensee has no rights in buildings, etc., acquired by Crown

179.—(1) Where land is staked and applied for as a mining claim and it appears that the land is being used for a purpose other than that of the mineral industry, the Minister may direct the Commissioner to hold a hearing. Improper use of land

Cancellation of claim

(2) Where, upon notice to all persons interested and after hearing such of them as appear, the Commissioner is satisfied that the land is being used for a purpose other than that of the mineral industry, he may make an order cancelling the claim, and, on the filing of the order with the appropriate recorder, the claim is cancelled. R.S.O. 1980, c. 268, s. 65, *amended*.

Townsites on unpatented claims

180.—(1) Where the Minister recommends the establishment or extension of a townsite on an unpatented mining claim, the Lieutenant Governor in Council may reserve the surface rights on any such claim or parts of any such claim as may be necessary for townsite purposes.

Regulations

(2) The Lieutenant Governor in Council may make such regulations as the Lieutenant Governor in Council considers necessary for the better carrying out of this section. R.S.O. 1980, c. 268, s. 66.

Reduction in area of claim

181.—(1) The Commissioner or the recorder may reduce the area of a mining claim staked where the surface rights have been granted, sold, leased or located, if in his opinion an area less than the prescribed area is sufficient for working the mines and minerals therein.

Exclusion of part of surface rights

(2) The Commissioner or the recorder may exclude from any mining claim such part of the surface rights as may be necessary for the occupation and utilization of buildings or improvements erected or made thereon prior to the time the claim was staked. R.S.O. 1980, c. 268, s. 93.

Drill core and splits to be kept

182.—(1) Every claim holder shall keep all drill core and splits thereof removed from his mining claims in containers clearly labelled as to claim number, hold number and depth interval of drill runs, stored in sequence of recovery in a place made known to the Minister for as long as his mining rights are retained.

Drill core not to be destroyed

(2) No person shall intentionally abandon, discard, dump, destroy or otherwise reduce the technical value of a diamond drill core or rotary drill cuttings obtained for exploratory purposes within Ontario without the permission of the Minister except those drill hole sections submitted for assaying or testing or microscopic, metallurgical and beneficiation studies.

Restriction on removal

(3) No person shall remove from Canada exploration diamond drill core or drill cuttings taken from mining land in Ontario without providing the Minister an opportunity to sample selectively the core or cuttings.

(4) Where complete destructive testing of exploration drill core or cuttings is performed, the results of the testing must be submitted to the Minister when the claims from which the drill core or cuttings were taken revert to the Crown. *New.* Test results

OFFENCES, PENALTIES AND PROSECUTIONS

183. Every person who, Offences

(a) prospects or works Crown land for minerals other than in accordance with this Act or the regulations;

(b) except as authorized under this Act or the regulations, stakes on Crown land or land, the mining rights of which are in the Crown, or applies to record a mining claim;

(c) while staking a mining claim on Crown land or land, the mining rights of which are in the Crown, fails to produce his prospector's licence to an inspector or the recorder on demand or within such time as the recorder or inspector allows;

(d) defaces, alters, removes or disturbs any post, tag, stake, picket, boundary line, figure, working or other mark properly placed, standing or made under this Act or the regulations;

(e) except under the authority of a quarry permit or letter of authority takes quarry material that is the property of the Crown;

(f) wilfully obstructs an employee of the Ministry in the execution of his duty under this Act;

(g) does not rehabilitate a quarry in accordance with the regulations;

(h) does not furnish the Commissioner, a person appointed by him or an inspector the necessary means to make an entry, inspection, examination or inquiry in relation to a mining claim or a quarry;

(i) obstructs a person in the exercise of a right granted under an order or does not obey an order under this Act;

(j) marks or stakes any part of a mining claim in a manner that is in contravention of this Act or the regulations;

(k) acts in contravention of this Act or the regulations;

(l) makes a material change in the wording or numbering of a prospector's licence after its issue;

(m) makes a false statement in an application, certificate, report, statement or other document filed or made under this Act or the regulations; or

(n) does not obey an order of the Commissioner,

is guilty of an offence and, on conviction, is liable to a fine of not more than $10,000. R.S.O. 1980, c. 268, s. 172, *amended*.

Penalty for offence against Part V

184.—(1) Every person who contravenes any provisions of Part V is guilty of an offence and, on conviction, is liable to a fine of not more than $25,000 and to imprisonment for a term of not more than three months.

Additional penalty for continuing offence

(2) Where the Minister has given written notice to a person that there is a contravention of any provision in Part V, that person, on conviction, is liable to a further fine of not more than $100 for every day that the offence continues after the notice.

Imprisonment of offender against Part V in certain cases

(3) Where in committing an offence under Part V, a person does or neglects to do any act, the commission or neglect of which could reasonably be foreseen as endangering the safety of any person, the offending person is liable, in addition to any other penalty under this Act, to imprisonment for a term of not more than three months. R.S.O. 1980, c. 268, s. 176, *amended*.

Prosecutions

185. No prosecution may be instituted for an offence against this Act except,

(a) by or by leave of the Commissioner, Director or the recorder;

(b) by direction of the county or district Crown Attorney; or

(c) by leave of the Attorney General of Ontario. R.S.O. 1980, c. 268, s. 177 (1), *amended*.

Penalty for offence against sections 173, 174

186. Every person who contravenes any provision of section 173 or 174 is guilty of an offence and, on conviction, is liable to a fine of not more than $10,000 or to imprisonment for a term of not more than one year, or to both. R.S.O. 1980, c. 268, s. 169, *amended*.

FRACTIONS

Claim posts govern

187.—(1) Subject to subsections (2) to (5), claim posts shall govern the size and location of all mining claims notwithstanding that the sketch submitted by a licensee at the time of recording expressed an intention to abut land already staked or alienated.

Fraction not open for staking—one licensee

(2) Where mining claims are recorded in the name of one licensee, a fraction found by survey within the block of claims on land or land under water is not open for staking.

Land fraction —two licensees

(3) Where mining claims are recorded in the names of different licensees and the claims comprise land only, a fraction found by survey lying between the claims is open for staking.

Water fraction —not open

(4) Where mining claims are recorded in the names of different licensees and a fraction comprising land under water found by survey lies between the claims, the fraction is not open for staking and the recorder may,

(a) award the fraction to the holder of the second staked claim and so indicate on the record; or

(b) authorize the staking of the fraction as a new mining claim by the holder of the second staked claim.

Fraction before survey

(5) Where a licensee prior to survey can establish, to the satisfaction of the recorder, that a fraction in land under water exists between mining claims recorded in the names of different holders, the recorder may,

(a) determine that the fraction is open for staking; or

(b) determine that the fraction does not exist until established by survey at which time he may determine its disposition in accordance with subsection (4).

Rectifying error

(6) Where there is nothing filed indicating an adverse interest at the time the fraction is discovered, the recorder may authorize the licensee to alter the writing or inscription on its posts or move posts and re-identify the boundary lines to eliminate the fraction. *New*.

PART VIII

AUTHORITY TO MAKE REGULATIONS

Regulations

188.—(1) The Lieutenant Governor in Council may make regulations,

(a) prescribing forms and providing for their use;

(b) requiring the payment of fees to the Minister, Commissioner, district managers and recorders and prescribing the amounts thereof;

(c) dividing Ontario into mining divisions, declaring the name that each division shall bear and describing the limits of the mining divisions;

(d) prescribing and governing the method of staking mining claims and creating exceptions respecting irregular areas, the shape, size and area of mining claims in unsubdivided areas, the standards and inscriptions of claim posts and tags and the blazing or alternative method of identifying boundary lines and prohibiting the use of used posts or material and by sketches illustrating such matters;

(e) prescribing information to be shown on applications to record the staking of mining claims;

(f) prescribing information to be shown on sketches or plans on or accompanying applications to record the staking of mining claims;

(g) governing the use and expiry of tags;

(h) defining, establishing and limiting types of assessment work, prescribing the dollar value of assessment work to be performed in any year on a mining claim;

(i) governing the performance of additional assessment work on mining claims exceeding the prescribed maximum areas and extension of time therefor;

(j) governing applications for leases;

(k) prescribing the contents of and supporting information in reports;

(l) permitting and governing the distribution of assessment work;

(m) prescribing annual rents and fees and minimum rents and fees payable under leases of mining land and mining rights and licences to hold mining rights and the adjustment of the rents and fees;

(n) prescribing the forms of security and terms and conditions of quarry permits;

(o) governing the issue, refusal and revocation of licences of occupation, exploratory licences of occupation and leases;

(p) prescribing conditions, reservations and provisions to which licences of occupation, exploratory licences of occupation and leases are subject;

(q) governing the rehabilitation of quarries;

(r) prescribing the mining land tax rate;

(s) prescribing the penalty and costs in respect of arrears of mining land tax;

(t) governing the opening, construction, maintenance and use of roads to, through or over mining claims, mining locations or land sold or leased as mining land or recorded under this Act or any predecessor of this Act, and for the opening, construction, maintenance and use of ditches, aqueducts, or raceways through, over or on such land for the conveying and passage of water for mining purposes;

(u) prescribing rates of interest;

(v) prescribing protective measures in respect of inactive mines;

(w) respecting the issue of licences to explore for and leases to produce natural gas and petroleum from Crown land, including,

(i) fees, rents and royalties payable in respect thereof, and

(ii) the bonding of licensees and the conditions of forfeiture of bonds;

(x) prescribing any matter that by this Act is required or permitted to be or referred to as prescribed by the regulations.

Idem

(2) Any regulation may be general or particular in its application, may be limited as to time or place, or both, and may exclude any place from the application of the regulation. R.S.O. 1980, c. 268, s. 190, *amended*.

Repeal

189. The *Mining Act*, being chapter 268 of the Revised Statutes of Ontario, 1980, is repealed.

Commencement

190. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

191. The short title of this Act is the *Mining Act, 1983*.

Bill 130

LIBRARY
APR 23

An Act to amend the Ministry of Health Act

Ms Copps

1st Reading November 25th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTE

The Bill is intended to ensure that hospitals and clinics in Ontario comply with and promote the World Health Organization Code of Marketing of Breast Milk Substitutes.

Bill 130 1983

An Act to amend the Ministry of Health Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 6 (1) of the *Ministry of Health Act*, being chapter 280 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause: s. 6 (1), amended

(k) to ensure that,

(i) all educational or informative literature, equipment and materials related to infant nutrition that are distributed through or used in hospitals or health facilities comply with the World Health Organization Code of Marketing of Breast Milk Substitutes,

(ii) hospitals and health facilities take appropriate measures to encourage breast feeding and promote the principles of the World Health Organization Code of Marketing of Breast Milk Substitutes, and

(iii) the use of infant formula and similar products is not promoted in or by a hospital or health facility.

2. This Act comes into force on the day it receives Royal Assent. Commencement

3. The short title of this Act is the *Ministry of Health Amendment Act, 1983*. Short title

Bill 131

An Act to Protect the Purchasers of Used Motor Vehicles

Mr. Boudria

1st Reading November 28th, 1983

2nd Reading

3rd Reading

Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTE

The Bill would require used car dealers to give consumers detailed information about used cars that are offered for sale, and would impose a statutory warranty of fitness. The warranty period would vary with the age and mileage of the used car.

Bill 131 1983

An Act to Protect the Purchasers of Used Motor Vehicles

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act, Interpretation

(a) "consumer" means an individual who purchases a motor vehicle for personal or household use;

(b) "motor vehicle" and "motor vehicle dealer" have the same meaning as in the *Motor Vehicle Dealers Act*; R.S.O. 1980, c. 299

(c) "prescribed" means prescribed by the regulations made under this Act;

(d) "used", when used in reference to a motor vehicle, means that the motor vehicle has had at least one previous owner other than its manufacturer and a motor vehicle dealer.

2. This Act does not apply in respect of the sale of a motor vehicle under an option to purchase contained in a lease of the motor vehicle. Exception

3. The class of a used motor vehicle, Class of used motor vehicle

(a) is "A" where,

(i) not more than two years have passed since the day that motor vehicles of the same make and model year were first offered for sale, or

(ii) the motor vehicle has not been driven more than 40,000 kilometres;

(b) is "B" where clause (a) does not apply and,

(i) not more than three years have passed since the day that motor vehicles of the same make and model year were first offered for sale, or

(ii) the motor vehicle has not been driven more than 60,000 kilometres;

(c) is "C" where clauses (a) and (b) do not apply and,

(i) not more than five years have passed since the day that motor vehicles of the same make and model year were first offered for sale, or

(ii) the motor vehicle has not been driven more than 80,000 kilometres; and

(d) is "D" where,

(i) more than five years have passed since the day that motor vehicles of the same make and model year were first offered for sale, or

(ii) the motor vehicle has been driven more than 80,000 kilometres.

Label required

4.—(1) No motor vehicle dealer shall offer a used motor vehicle for sale without affixing to it a label that is clearly legible from outside the vehicle and states,

(a) the class of the used motor vehicle and the nature of the warranty, if any, conferred by subsection 6 (1);

(b) the number of miles or kilometres registered on the odometer and the number of miles or kilometres that the used motor vehicle has actually been driven;

(c) the make, model, model year and serial number of the used motor vehicle and the cubic capacity of its engine;

(d) whether the used motor vehicle has been used as a taxi, police car, ambulance, driver training car or demonstrator car;

(e) whether the used motor vehicle has been rented or leased;

(f) the identity of every previous owner of the used motor vehicle who used it in the course of carrying on business;

(g) any repairs made to the used motor vehicle since it came into the motor vehicle dealer's possession;

(h) the details of any warranty offered by the motor vehicle dealer in addition to the warranty conferred by subsection 6 (1); and

(i) the name, address and telephone number of the person who last owned the used motor vehicle.

Dealer may rely on previous owner's statement

(2) For the purpose of making the statements referred to in clauses (1) (b), (d), (e) and (f), a motor vehicle dealer may rely on the written statements of the last owner of the used motor vehicle, if the motor vehicle dealer so states on the label.

Prohibition

(3) No person shall knowingly make a false statement on a label referred to in subsection (1).

Contract

5. A contract between a motor vehicle dealer and a consumer for the sale of a used motor vehicle shall be in writing and shall incorporate the label referred to in subsection 4 (1).

Implied warranty

6.—(1) A contract between a motor vehicle dealer and a consumer for the sale of a used motor vehicle includes a warranty that the used motor vehicle will remain in good working order,

(a) where its class is "A", for six months from the date of delivery to the consumer or until the car has been driven 10,000 kilometres after that date, whichever is earlier;

(b) where its class is "B", for three months from the date of delivery to the consumer or until the car has been driven 5,000 kilometres after that date, whichever is earlier; and

(c) where its class is "C", for one month from the date of delivery to the consumer or until the car has been driven 1,700 kilometres after that date, whichever is earlier.

Exception

(2) The warranty conferred by subsection (1) does not apply to,

(a) upholstery or decorative items;

(b) prescribed accessories; or

(c) damage that is the result of collision, abuse or neglect.

Listed defects

7. Where a motor vehicle dealer who offers a class "A", "B" or "C" used motor vehicle for sale indicates, on the label referred to in subsection 4 (1), defects of the used motor vehicle and an estimate of the cost of their repair,

(a) the motor vehicle dealer is bound to perform the repairs or have them performed at the estimated price at the request of a consumer who purchases the used motor vehicle; and

(b) the warranty conferred by subsection 6 (1) does not apply in respect of the defects.

Offence

8. A person who contravenes subsection 4 (1) or (3), and a director, officer or employee of a corporation who authorizes, permits or acquiesces in such a contravention by the corporation is guilty of an offence and on conviction is liable to a fine not exceeding $5,000.

Regulations

9. The Lieutenant Governor in Council may make regulations prescribing accessories for the purpose of clause 6 (2) (b).

Commencement

10. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

11. The short title of this Act is the *Used Car Buyers Protection Act, 1983*.

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

Bill 132

An Act to amend the Powers of Attorney Act

The Hon. R. McMurtry
Attorney General

1st Reading November 29th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTES

This Bill is complementary to the Bill to amend the *Mental Health Act*.

SECTION 1. At present, a power of attorney to survive legal incapacity is revoked upon the Public Trustee becoming committee automatically when the donor is certified as mentally incompetent under the *Mental Health Act*.

The amendment would permit the donor of the power to expressly exclude the statutory committeeship of the Public Trustee under those circumstances.

SECTION 2. The amendment would continue to exclude enduring powers of attorney where a committee is appointed except in the case of express provision which would exclude the statutory committeeship of the Public Trustee under the *Mental Health Act*.

The Public Trustee may regain this committeeship by court order.

SECTION 3. The form of general power of attorney is amended to add the form of the provision provided for in section 1 of this Bill.

Bill 132 1983

An Act to amend the Powers of Attorney Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Powers of Attorney Act*, being chapter 386 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section: s. 5a, enacted

5a.—(1) Where a provision referred to in section 5 is included in a power of attorney, the power of attorney may also include a provision as set out in Form 1 expressly excluding the operation of clauses 38 (1) (a) and (b) of the *Mental Health Act* in the event the donor is found not competent to manage his estate under that Act. Powers of attorney to exclude committeeship of Public Trustee under R.S.O.1980, c. 262, s. 38

(2) Where a power of attorney containing a provision referred to in section 5 is in effect on the day the *Powers of Attorney Amendment Act, 1983* comes into force and the donor of the power has legal incapacity on the 1st day of January, 1984, the power of attorney shall be deemed to contain the provision referred to in subsection (1). Idem 1983, c...

2.—(1) Clause 8 (c) of the said Act is amended by adding at the end thereof "unless the power of attorney also contains the provision referred to in section 5a". s. 8 (c), amended

(2) Section 8 of the said Act is amended by adding thereto the following subsection: s. 8, amended

(2) A power of attorney that contains both the provisions referred to in sections 5 and 5a becomes invalid and of no effect upon the appointment of a committee of the estate of the donor by a court. Effect of committeeship by court order

3. Form 1 of the said Act is repealed and the following substituted therefor: Form 1, re-enacted

Form 1

Form of Power of Attorney

THIS GENERAL POWER OF ATTORNEY is given on

.....19..... , by .....
(Date) (Donor)

of .....

1. I appoint ..... of .....
(Attorney)

(or ..... of .....
(Attorney)

and ..... of .....
(Attorney)

jointly *or* jointly and severally) to be my attorney(s) in accordance with the *Powers of Attorney Act* and to do on my behalf anything that I can lawfully do by an attorney.

2. This power of attorney is subject to the following conditions and restrictions:

(N.B. This space may be left blank)

OPTIONAL PARAGRAPHS DEALING WITH SUBSEQUENT LEGAL INCAPACITY OF THE DONOR

3. (The following paragraph may be included if the donor wishes the authority granted by this power of attorney to continue notwithstanding any subsequent mental infirmity on his part:)

In accordance with the *Powers of Attorney Act*, I declare that this power of attorney may be exercised during any subsequent legal incapacity on my part.

4. (Where paragraph 3 is included, the following paragraph may also be included if the donor wishes to provide that the Public Trustee shall not be committee of the donor's estate where the donor enters a psychiatric facility and is certified by a physician to be not competent to manage his estate as provided by the *Mental Health Act*:)

In accordance with the *Powers of Attorney Act*, I declare that, after due consideration, I am satisfied that the authority conferred on the attorney(s) named in this power of attorney is adequate to provide for the competent and effectual management of all my estate in case I should become a patient in a psychiatric facility and be certified as not competent to manage my estate under the *Mental Health Act*. I therefore direct that in that event, the attorney(s) named in this power of attorney may retain this power of attorney for the management of my estate by complying with subsection 38 (2) of the *Mental Health Act* and in that case the Public Trustee shall not become committee of my estate as would otherwise be the case under clauses 38 (1) (a) and (b) of that Act.

(Note: Where this paragraph is included and the donor of a power enters a psychiatric facility, the attorney must notify the Public Trustee immediately, in writing, of his intention to manage all the estate by means of the power of attorney and supply the Public Trustee with a copy of it.)

WITNESSED BY:

.....
(Signature of Witness)

.....
(Name of Witness)

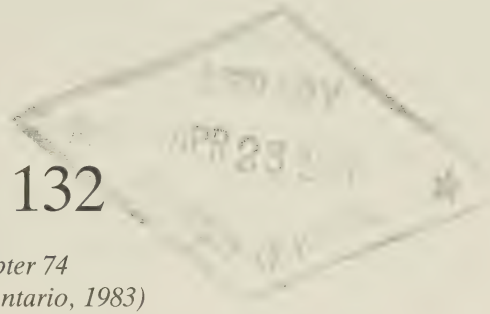
.....
(Address)

.....
(Donor)

4. **This Act comes into force on the day it receives Royal Assent.** Commencement

5. **The short title of this Act is the *Powers of Attorney Amendment Act, 1983*.** Short title

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983



Bill 132

(Chapter 74
Statutes of Ontario, 1983)

An Act to amend the Powers of Attorney Act

The Hon. R. McMurtry
Attorney General

1st Reading	November 29th, 1983
2nd Reading	December 12th, 1983
3rd Reading	December 15th, 1983
Royal Assent	December 16th, 1983

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

Bill 132 1983

An Act to amend the Powers of Attorney Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Powers of Attorney Act*, being chapter 386 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section: s. 5a, enacted

5a.—(1) Where a provision referred to in section 5 is included in a power of attorney, the power of attorney may also include a provision as set out in Form 1 expressly excluding the operation of clauses 38 (1) (a) and (b) of the *Mental Health Act* in the event the donor is found not competent to manage his estate under that Act. Powers of attorney to exclude committeeship of Public Trustee under R.S.O.1980, c. 262, s. 38

(2) Where a power of attorney containing a provision referred to in section 5 is in effect on the day the *Powers of Attorney Amendment Act, 1983* comes into force and the donor of the power has legal incapacity on the 1st day of January, 1984, the power of attorney shall be deemed to contain the provision referred to in subsection (1). Idem 1983, c. 74

2.—(1) Clause 8 (c) of the said Act is amended by adding at the end thereof "unless the power of attorney also contains the provision referred to in section 5a". s. 8 (c), amended

(2) Section 8 of the said Act is amended by adding thereto the following subsection: s. 8, amended

(2) A power of attorney that contains both the provisions referred to in sections 5 and 5a becomes invalid and of no effect upon the appointment of a committee of the estate of the donor by a court. Effect of committeeship by court order

3. Form 1 of the said Act is repealed and the following substituted therefor: Form 1, re-enacted

Form 1

Form of Power of Attorney

THIS GENERAL POWER OF ATTORNEY is given on

.....19..... , by .....
(Date) (Donor)

of .....

1. I appoint ..... of .....
(Attorney)

(or ..... of .....
(Attorney)

and ..... of .....
(Attorney)

jointly *or* jointly and severally) to be my attorney(s) in accordance with the *Powers of Attorney Act* and to do on my behalf anything that I can lawfully do by an attorney.

2. This power of attorney is subject to the following conditions and restrictions:

(N.B. This space may be left blank)

OPTIONAL PARAGRAPHS DEALING WITH SUBSEQUENT LEGAL INCAPACITY OF THE DONOR

3. (The following paragraph may be included if the donor wishes the authority granted by this power of attorney to continue notwithstanding any subsequent mental infirmity on his part:)

In accordance with the *Powers of Attorney Act*, I declare that this power of attorney may be exercised during any subsequent legal incapacity on my part.

4. (Where paragraph 3 is included, the following paragraph may also be included if the donor wishes to provide that the Public Trustee shall not be committee of the donor's estate where the donor enters a psychiatric facility and is certified by a physician to be not competent to manage his estate as provided by the *Mental Health Act*:)

In accordance with the *Powers of Attorney Act*, I declare that, after due consideration, I am satisfied that the authority conferred on the attorney(s) named in this power of attorney is adequate to provide for the competent and effectual management of all my estate in case I should become a patient in a psychiatric facility and be certified as not competent to manage my estate under the *Mental Health Act*. I therefore direct that in that event, the attorney(s) named in this power of attorney may retain this power of attorney for the management of my estate by complying with subsection 38 (2) of the *Mental Health Act* and in that case the Public Trustee shall not become committee of my estate as would otherwise be the case under clauses 38 (1) (a) and (b) of that Act.

(Note: Where this paragraph is included and the donor of a power enters a psychiatric facility, the attorney must notify the Public Trustee immediately, in writing, of his intention to manage all the estate by means of the power of attorney and supply the Public Trustee with a copy of it.)

WITNESSED BY:	
.....	
(Signature of Witness)	
.....	.....
(Name of Witness)	(Donor)
.....	
(Address)	

4. **This Act comes into force on the day it receives Royal Assent.** Commencement

5. **The short title of this Act is the *Powers of Attorney Amendment Act, 1983*.** Short title

Bill 133 Government Bill

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

Gover
Publica



Bill 133

An Act to amend the Mental Health Act

The Hon. R. McMurtry
Attorney General

1st Reading November 29th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTES

This Bill is complementary to the Bill to amend the *Powers of Attorney Act*.

SECTIONS 1 and 2. The provisions give a general power of attorney containing the specific provision provided for in the Bill to amend the *Powers of Attorney Act* primacy over the statutory appointment of the Public Trustee as committee of the estate of the donor of the power who is certified as mentally incompetent.

The Public Trustee may be reinstated by court order only.

SECTION 3. The provision repealed now reads as follows:

48. Upon the Public Trustee becoming committee of the estate of a person under this Act or by an order made under this Act, every power of attorney of such person is void.

In respect of powers of attorney that endure during legal incapacity, the section repealed is conflicting; in respect of other powers of attorney, it is unnecessary.

Bill 133 1983

An Act to amend the Mental Health Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 38 of the *Mental Health Act*, being chapter 262 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsections: s. 38, amended

(2) Where the donee of a power of attorney that contains a provision referred to in section 5a of the *Powers of Attorney Act* satisfies the Public Trustee of the existence of the power and notifies the Public Trustee of the donee's intention to manage all the estate by means of the power of attorney, the committeeship of the Public Trustee under clauses (1) (a) and (b) is excluded or terminated. Notice of power of attorney under R.S.O.1980, c. 386, s. 5a

(3) Where the committeeship of the Public Trustee under clauses (1) (a) and (b) is excluded or terminated under subsection (2), the Supreme Court may, at any time upon the application of the Public Trustee, appoint him as committee of the estate of the donor of the power of attorney with all or any of the rights and powers conferred upon him by this Act with regard to the management of estates. Appointment of Public Trustee as committee by court order

2. Section 42 of the said Act is amended by adding thereto the following clause: s. 42, amended

(ba) upon receipt of satisfactory evidence of a power of attorney that contains the provisions referred to in sections 5 and 5a of the *Powers of Attorney Act* and the notice referred to in subsection 38 (2).

3. Section 48 of the said Act is repealed. s. 48, repealed

4. This Act comes into force on the day it receives Royal Assent. Commencement

5. The short title of this Act is the *Mental Health Amendment Act, 1983*. Short title



Bill 133

(Chapter 75
Statutes of Ontario, 1983)

An Act to amend the Mental Health Act

The Hon. R. McMurtry
Attorney General

1st Reading	November 29th, 1983
2nd Reading	December 12th, 1983
3rd Reading	December 15th, 1983
Royal Assent	December 16th, 1983

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

Bill 133 1983

An Act to amend the Mental Health Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 38 of the *Mental Health Act*, being chapter 262 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsections: s. 38, amended

(2) Where the donee of a power of attorney that contains a provision referred to in section 5a of the *Powers of Attorney Act* satisfies the Public Trustee of the existence of the power and notifies the Public Trustee of the donee's intention to manage all the estate by means of the power of attorney, the committeeship of the Public Trustee under clauses (1) (a) and (b) is excluded or terminated. Notice of power of attorney under R.S.O.1980, c. 386, s. 5a

(3) Where the committeeship of the Public Trustee under clauses (1) (a) and (b) is excluded or terminated under subsection (2), the Supreme Court may, at any time upon the application of the Public Trustee, appoint him as committee of the estate of the donor of the power of attorney with all or any of the rights and powers conferred upon him by this Act with regard to the management of estates. Appointment of Public Trustee as committee by court order

2. Section 42 of the said Act is amended by adding thereto the following clause: s. 42, amended

(ba) upon receipt of satisfactory evidence of a power of attorney that contains the provisions referred to in sections 5 and 5a of the *Powers of Attorney Act* and the notice referred to in subsection 38 (2).

3. Section 48 of the said Act is repealed. s. 48, repealed

4. This Act comes into force on the day it receives Royal Assent. Commencement

5. The short title of this Act is the *Mental Health Amendment Act, 1983*. Short title

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

Bill 134

An Act to amend the Immunization of School Pupils Act, 1982

The Hon. K. C. Norton
Minister of Health

1st Reading	December 1st, 1983
2nd Reading	
3rd Reading	
Royal Assent	

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTES

SECTION 1. Clause 1 (a) of the Act defines "Board" to mean the Health Facilities Appeal Board under the *Ambulance Act*. The amendment changes the definition so that hearings under the Act will be held by the Health Protection Appeal Board under the *Health Protection and Promotion Act, 1983*.

SECTION 2. Section 12 of the Act provides for a hearing by the Board at the request of a parent of a pupil suspended or excluded from school under an order by a medical officer of health.

New subsection (4a) requires the Board to hold the hearing within fifteen days after receipt of the written notice requiring the hearing.

Bill 134 1983

An Act to amend the Immunization of School Pupils Act, 1982

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clause 1 (a) of the *Immunization of School Pupils Act, 1982*, being chapter 41, is repealed and the following substituted therefor: s. 1 (a), re-enacted

(a) "Board" means the Health Protection Appeal Board under the *Health Protection and Promotion Act, 1983*. 1983, c. 10

(2) Where, before subsection (1) comes into force, a proceeding has been commenced before the Health Facilities Appeal Board respecting an order made under the *Immunization of School Pupils Act, 1982*, and, Transition

(a) evidence has been given before the Health Facilities Appeal Board, clause 1 (a) of the said Act continues in force in respect of the proceeding as if not repealed and re-enacted by subsection (1); or

(b) evidence has not been given before the Health Facilities Appeal Board, the proceeding shall be transferred to and shall become a proceeding before the Health Protection Appeal Board and the Health Protection Appeal Board may give such directions to the parties as the Board considers proper in respect of the transfer of the proceeding.

2. Section 12 of the said Act is amended by adding thereto the following subsection: s. 12, amended

(4a) The Board shall hold a hearing under this section within fifteen days after receipt by the Board of the notice in writing requiring the hearing and the Board may, from time to time at the request or with the consent of the person requiring the Time for hearing

hearing, extend the time for holding the hearing for such period or periods of time as the Board considers just.

Commencement

3. **This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.**

Short title

4. **The short title of this Act is the *Immunization of School Pupils Amendment Act, 1983*.**

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

Bill 134

(Chapter 76
Statutes of Ontario, 1983)

LIBRARY APR 23

An Act to amend the Immunization of School Pupils Act, 1982

The Hon. K. C. Norton
Minister of Health

1st Reading	December 1st, 1983
2nd Reading	December 13th, 1983
3rd Reading	December 15th, 1983
Royal Assent	December 16th, 1983

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

Bill 134 1983

An Act to amend the Immunization of School Pupils Act, 1982

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clause 1 (a) of the *Immunization of School Pupils Act, 1982*, being chapter 41, is repealed and the following substituted therefor: s. 1 (a), re-enacted

(a) "Board" means the Health Protection Appeal Board under the *Health Protection and Promotion Act, 1983*. 1983, c. 10

(2) Where, before subsection (1) comes into force, a proceeding has been commenced before the Health Facilities Appeal Board respecting an order made under the *Immunization of School Pupils Act, 1982*, and, Transition

(a) evidence has been given before the Health Facilities Appeal Board, clause 1 (a) of the said Act continues in force in respect of the proceeding as if not repealed and re-enacted by subsection (1); or

(b) evidence has not been given before the Health Facilities Appeal Board, the proceeding shall be transferred to and shall become a proceeding before the Health Protection Appeal Board and the Health Protection Appeal Board may give such directions to the parties as the Board considers proper in respect of the transfer of the proceeding.

2. Section 12 of the said Act is amended by adding thereto the following subsection: s. 12, amended

(4a) The Board shall hold a hearing under this section within fifteen days after receipt by the Board of the notice in writing requiring the hearing and the Board may, from time to time at the request or with the consent of the person requiring the Time for hearing

hearing, extend the time for holding the hearing for such period or periods of time as the Board considers just.

Commencement

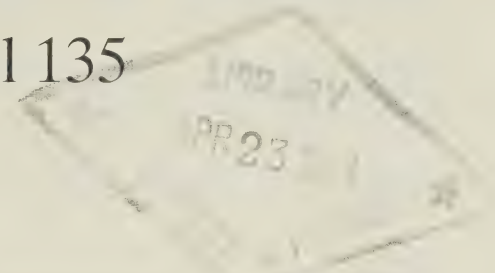
3. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

4. The short title of this Act is the *Immunization of School Pupils Amendment Act, 1983*.

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

Bill 135



An Act to amend the Construction Lien Act, 1983

The Hon. R. McMurtry
Attorney General

1st Reading December 1st, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTES

GENERAL

The Bill provides that a "home buyer" (as defined) is not an owner for the purposes of the Act, so that a mortgage given or assumed by such a person is not subject to the priority otherwise given to liens arising out of the construction of, or other improvements made to, the premises being purchased. In addition, the Bill clarifies certain other provisions of the Act and corrects certain technical errors.

SECTION 1.—Subsection 1. "Home" is defined as a single-family dwelling, duplex or residential condominium unit.

"Home buyer" is defined as a person purchasing a home whose down-payment does not exceed 30 per cent of the purchase price and who does not take title to the premises until the home is ready for occupancy (evidenced in the case of a new home by a municipal occupancy permit or a certificate of completion under the *Ontario New Home Warranties Plan Act*).

Subsection 2. Paragraph 15 of subsection 1 (1) defines "owner" for the purposes of the Act; a "home buyer" is excluded from that definition.

Subsection 3. The amendment corrects a technical error in the definition of the term "written notice of a lien".

SECTION 2. Subsection 3 (3) of the Act now reads as follows:

(3) Despite subsection 14 (1), an architect or the holder of a certificate of practice under the Architects Act does not have a lien.

The re-enactment is designed to make it clear that employees of an architect, as well as the architect himself, do not have a lien.

SECTION 3. The retention of holdbacks on the closing of a transaction of purchase and sale by a purchaser who is an owner is specifically authorized.

SECTION 4. Section 20 of the Act provides for a general lien against each of the several premises involved where a single contract is entered into for improvements on more than one premises.

The subsection to be added provides that a general lien does not arise under those circumstances, where the contract provides in writing that liens shall arise and expire on a lot-by-lot basis.

SECTION 5. The subsection to be added to section 36 of the Act (providing for the perfecting of a preserved lien by commencing an action) permits a person who has preserved a lien to perfect it by commencing an action before a period of credit he has extended has expired.

SECTION 6. An incorrect expression is rectified; no change in substance is involved.

SECTION 7.—Subsection 1. Subsection 39 (1) of the Act sets out a list of the kinds of information that a person having a lien may require to be provided by an owner or contractor. Added by new subparagraph v to that list is whether the contract provides that liens shall arise and expire on a lot-by-lot basis. See the Note to section 4 of the Bill.

Subsection 2. The amendment will require the providing of information to a person having a lien to enable him to ascertain whether the purchaser of the premises is a "home buyer".

SECTION 8. The amendment is to the same purpose as that set out in section 6 of the Bill.

SECTION 9.—Subsection 1. The introductory words to subsection 80 (5) of the Act now are "Where any mortgage is registered ...". As re-enacted, the subsection will commence

"Where a mortgage affecting the owner's interest in the premises is registered ...". The change is intended to make it clear that the priority of liens over mortgages set out in the subsection applies only in the case where a mortgage that affects the owner's interest in the premises is registered.

Subsection 2. Subsection 80 (10) of the Act now reads as follows:

(10) A financial guarantee bond in a form prescribed may be registered on the title to the premises, and where the bond is registered a purchaser who takes title from the mortgagee takes title to the premises free of the priority of the liens created by subsections (2) and (5), the security of the bond takes the place of the priority created by those subsections and persons who have proved liens have a right of action against the surety on the bond.

As re-enacted, the subsection will permit a letter of credit or a guarantee from a bank, in addition to a financial guarantee bond issued by a guarantee company, when registered on title, to take the place of the lien priorities created by subsections 80 (2) and (5) of the Act.

The new subsection (11) provides that where a mortgage is given or assumed by a home buyer, the priority of liens over the mortgage to the extent of any deficiency in the holdbacks required to be retained does not apply.

Bill 135 1983

An Act to amend the Construction Lien Act, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 1 (1) of the *Construction Lien Act, 1983*, being chapter 6, is amended by adding thereto the following paragraphs: s. 1 (1), amended

7a. "home" means,

i. a self-contained one-family dwelling, detached or attached to one or more others by a common wall,

ii. a building composed of two self-contained, one-family dwellings under one ownership, or

iii. a condominium one-family dwelling unit, including the common interests appurtenant thereto,

and includes any structure or works used in conjunction therewith;

7b. "home buyer" means a person who buys the interest of an owner in a premises that is a home, whether built or not at the time the agreement of purchase and sale in respect thereof is entered into, provided,

i. not more than 30 per cent of the purchase price, excluding money held in trust under section 53 of the *Condominium Act*, is paid prior to the conveyance, and R.S.O. 1980, c. 84

ii. the home is not conveyed until it is ready for occupancy, evidenced in the case of a new home by the issuance under the *Building Code Act* of a permit authorizing occupancy or the issuance under the *Ontario New Home* R.S.O. 1980, cc. 51, 350

Warranties Plan Act of a certificate of completion and possession.

s. 1 (1), par. 15, amended

(2) Paragraph 15 of subsection 1 (1) of the said Act is amended by adding at the end thereof "but does not include a home buyer".

s. 1 (1), par. 29, amended

(3) Paragraph 29 of the said subsection 1 (1) is amended by striking out "lien claimant" in the second line and inserting in lieu thereof "person having a lien".

s. 3 (3), re-enacted

2. Subsection 3 (3) of the said Act is repealed and the following substituted therefor:

Architects and their employees do not have lien

R.S.O.1980, c. 26

(3) Despite subsection 14 (1), an architect or the holder of a certificate of practice under the *Architects Act* and the employees thereof do not have a lien.

s. 5, amended

3. Section 5 of the said Act is amended by adding thereto the following subsection:

Retention of holdbacks authorized

(2) Without restricting the generality of subsection (1), where the purchaser is an owner, an agreement of purchase and sale that provides for the making or completion of an improvement shall be deemed to provide for the retention of holdbacks by the purchaser, and tender by the purchaser on closing is not defective by reason only that the purchaser does not tender the amount of the holdbacks.

s. 20, amended

4. Section 20 of the said Act is amended by adding thereto the following subsection:

Where subs. (1) does not apply

(2) Subsection (1) does not apply and no general lien arises under or in respect of a contract that provides in writing that liens shall arise and expire on a lot-by-lot basis.

s. 36, amended

5. Section 36 of the said Act is amended by adding thereto the following subsection:

Where period of credit extended

(6) A person who has preserved a lien, but who has extended a period of credit for the payment of the amount to which the lien relates, may commence an action for the purpose of perfecting his lien even though the period of credit has not at the time expired.

s. 37 (2), amended

6. Subsection 37 (2) of the said Act is amended by striking out "an application" in the first and second lines and inserting in lieu thereof "a motion".

7.—(1) Paragraph 1 of subsection 39 (1) of the said Act is amended by adding thereto the following subparagraph: s. 39 (1), par. 1, amended

v. a statement of whether the contract provides in writing that liens shall arise and expire on a lot-by-lot basis.

(2) Subsection 39 (1) of the said Act is amended by adding thereto the following paragraph: s. 39 (1), amended

3. By an owner who is selling his interest in a premises that is a home, with,

i. the name and address of the purchaser, the sale price, the amount of the purchase price paid or to be paid prior to the conveyance, the scheduled date of the conveyance and the lot and plan number or other legal description of the premises as contained in the agreement of purchase and sale, and

ii. the date on which a permit authorizing occupancy or a certificate of completion and possession has been issued.

8. Subsection 44 (4) of the said Act is amended by striking out "application" in the fourth line and inserting in lieu thereof "motion". s. 44 (4), amended

9.—(1) Subsection 80 (5) of the said Act is repealed and the following substituted therefor: s. 80 (5), re-enacted

(5) Where a mortgage affecting the owner's interest in the premises is registered after the time when the first lien arose in respect of an improvement, the liens arising from the improvement have priority over the mortgage to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV. Special priority against subsequent mortgages

(2) Subsection 80 (10) of the said Act is repealed and the following substituted therefor: s. 80 (10), re-enacted

(10) A purchaser who takes title from a mortgagee takes title to the premises free of the priority of the liens created by subsections (2) and (5) where, Financial guarantee bond

(a) a financial guarantee bond issued by a guarantee company to which the *Guarantee Companies Securities Act* applies; or R.S.O. 1980, c. 192

(b) a letter of credit or a guarantee from a bank named in Schedule A or B to the *Bank Act* (Canada),

1980-81, c. 40 (Can.)

in a form prescribed is registered on the title to the premises, and, upon registration, the security of the bond, letter of credit or the guarantee takes the place of the priority created by those subsections, and persons who have proved liens have a right of action against the surety on the bond or guarantee or the issuer of the letter of credit.

Home buyer's mortgage

(11) Subsections (2) and (5) do not apply to a mortgage given or assumed by a home buyer.

Commencement

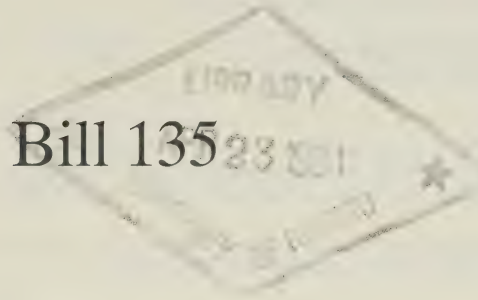
10. **This Act shall be deemed to have come into force on the 2nd day of April, 1983.**

Short title

11. **The short title of this Act is the *Construction Lien Amendment Act, 1983*.**

Governm
Public

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983



Bill 135

An Act to amend the Construction Lien Act, 1983

The Hon. R. McMurtry
Attorney General

1st Reading December 1st, 1983
2nd Reading December 13th, 1983
3rd Reading
Royal Assent

(Reprinted as amended by the Committee of the Whole House)

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTES

GENERAL

The Bill provides that a "home buyer" (as defined) is not an owner for the purposes of the Act, so that a mortgage given or assumed by such a person is not subject to the priority otherwise given to liens arising out of the construction of, or other improvements made to, the premises being purchased. In addition, the Bill clarifies certain other provisions of the Act and corrects certain technical errors.

SECTION 1.—Subsection 1. "Home" is defined as a single-family dwelling, duplex or residential condominium unit.

"Home buyer" is defined as a person purchasing a home whose down-payment does not exceed 30 per cent of the purchase price and who does not take title to the premises until the home is ready for occupancy (evidenced in the case of a new home by a municipal occupancy permit or a certificate of completion under the *Ontario New Home Warranties Plan Act*).

Subsection 2. Paragraph 15 of subsection 1 (1) defines "owner" for the purposes of the Act; a "home buyer" is excluded from that definition.

Subsection 3. The amendment corrects a technical error in the definition of the term "written notice of a lien".

SECTION 2. Subsection 3 (3) of the Act now reads as follows:

(3) Despite subsection 14 (1), an architect or the holder of a certificate of practice under the Architects Act does not have a lien.

The re-enactment is designed to make it clear that employees of an architect, as well as the architect himself, do not have a lien.

SECTION 3. The retention of holdbacks on the closing of a transaction of purchase and sale by a purchaser who is an owner is specifically authorized.

SECTION 4. Section 20 of the Act provides for a general lien against each of the several premises involved where a single contract is entered into for improvements on more than one premises.

The subsection to be added provides that a general lien does not arise under those circumstances, where the contract provides in writing that liens shall arise and expire on a lot-by-lot basis.

SECTION 5. The subsection to be added to section 36 of the Act (providing for the perfecting of a preserved lien by commencing an action) permits a person who has preserved a lien to perfect it by commencing an action before a period of credit he has extended has expired.

SECTION 6. An incorrect expression is rectified; no change in substance is involved.

SECTION 7.—Subsection 1. Subsection 39 (1) of the Act sets out a list of the kinds of information that a person having a lien may require to be provided by an owner or contractor. Added by new subparagraph v to that list is whether the contract provides that liens shall arise and expire on a lot-by-lot basis. See the Note to section 4 of the Bill.

Subsection 2. The amendment will require the providing of information to a person having a lien to enable him to ascertain whether the purchaser of the premises is a "home buyer".

SECTION 8. The amendment is to the same purpose as that set out in section 6 of the Bill.

SECTION 9.—Subsection 1. The introductory words to subsection 80 (5) of the Act now are "Where any mortgage is registered ...". As re-enacted, the subsection will commence

"Where a mortgage affecting the owner's interest in the premises is registered ...". The change is intended to make it clear that the priority of liens over mortgages set out in the subsection applies only in the case where a mortgage that affects the owner's interest in the premises is registered.

Subsection 2. Subsection 80 (10) of the Act now reads as follows:

(10) A financial guarantee bond in a form prescribed may be registered on the title to the premises, and where the bond is registered a purchaser who takes title from the mortgagee takes title to the premises free of the priority of the liens created by subsections (2) and (5), the security of the bond takes the place of the priority created by those subsections and persons who have proved liens have a right of action against the surety on the bond.

As re-enacted, the subsection will permit a letter of credit or a guarantee from a bank, in addition to a financial guarantee bond issued by a guarantee company, when registered on title, to take the place of the lien priorities created by subsections 80 (2) and (5) of the Act.

The new subsection (11) provides that where a mortgage is given or assumed by a home buyer, the priority of liens over the mortgage to the extent of any deficiency in the holdbacks required to be retained does not apply.

Bill 135 1983

An Act to amend the Construction Lien Act, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 1 (1) of the *Construction Lien Act, 1983*, being chapter 6, is amended by adding thereto the following paragraphs: s. 1 (1), amended

7a. "home" means,

i. a self-contained one-family dwelling, detached or attached to one or more others by a common wall,

ii. a building composed of two self-contained, one-family dwellings under one ownership, or

iii. a condominium one-family dwelling unit, including the common interests appurtenant thereto,

and includes any structure or works used in conjunction therewith;

7b. "home buyer" means a person who buys the interest of an owner in a premises that is a home, whether built or not at the time the agreement of purchase and sale in respect thereof is entered into, provided,

i. not more than 30 per cent of the purchase price, excluding money held in trust under section 53 of the *Condominium Act*, is paid prior to the conveyance, and R.S.O. 1980, c. 84

ii. the home is not conveyed until it is ready for occupancy, evidenced in the case of a new home by the issuance of a municipal permit

R.S.O. 1980, c. 350

authorizing occupancy or the issuance under the *Ontario New Home Warranties Plan Act* of a certificate of completion and possession.

s. 1 (1), par. 15, amended

(2) Paragraph 15 of subsection 1 (1) of the said Act is amended by adding at the end thereof "but does not include a home buyer".

s. 1 (1), par. 29, amended

(3) Paragraph 29 of the said subsection 1 (1) is amended by striking out "lien claimant" in the second line and inserting in lieu thereof "person having a lien".

s. 3 (3), re-enacted

2. Subsection 3 (3) of the said Act is repealed and the following substituted therefor:

Architects and their employees do not have lien

(3) Despite subsection 14 (1), an architect or the holder of a certificate of practice under the *Architects Act* and the employees thereof do not have a lien.

R.S.O.1980, c. 26

s. 5, amended

3. Section 5 of the said Act is amended by adding thereto the following subsection:

Retention of holdbacks authorized

(2) Without restricting the generality of subsection (1), where the purchaser is an owner, an agreement of purchase and sale that provides for the making or completion of an improvement shall be deemed to provide for the retention of holdbacks by the purchaser, and tender by the purchaser on closing is not defective by reason only that the purchaser does not tender the amount of the holdbacks.

s. 20, amended

4. Section 20 of the said Act is amended by adding thereto the following subsection:

Where subs. (1) does not apply

(2) Subsection (1) does not apply and no general lien arises under or in respect of a contract that provides in writing that liens shall arise and expire on a lot-by-lot basis.

s. 36, amended

5. Section 36 of the said Act is amended by adding thereto the following subsection:

Where period of credit extended

(6) A person who has preserved a lien, but who has extended a period of credit for the payment of the amount to which the lien relates, may commence an action for the purpose of perfecting his lien even though the period of credit has not at the time expired.

6. Subsection 37 (2) of the said Act is amended by striking out "an application" in the first and second lines and inserting in lieu thereof "a motion". s. 37 (2), amended

7.—(1) Paragraph 1 of subsection 39 (1) of the said Act is amended by adding thereto the following subparagraph: s. 39 (1), par. 1, amended

v. a statement of whether the contract provides in writing that liens shall arise and expire on a lot-by-lot basis.

(2) Subsection 39 (1) of the said Act is amended by adding thereto the following paragraph: s. 39 (1), amended

3. By an owner who is selling his interest in a premises that is a home, with,

i. the name and address of the purchaser, the sale price, the amount of the purchase price paid or to be paid prior to the conveyance, the scheduled date of the conveyance and the lot and plan number or other legal description of the premises as contained in the agreement of purchase and sale, and

ii. the date on which a permit authorizing occupancy or a certificate of completion and possession has been issued.

8. Subsection 44 (4) of the said Act is amended by striking out "application" in the fourth line and inserting in lieu thereof "motion". s. 44 (4), amended

9.—(1) Subsection 80 (5) of the said Act is repealed and the following substituted therefor: s. 80 (5), re-enacted

(5) Where a mortgage affecting the owner's interest in the premises is registered after the time when the first lien arose in respect of an improvement, the liens arising from the improvement have priority over the mortgage to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV. Special priority against subsequent mortgages

(2) Subsection 80 (10) of the said Act is repealed and the following substituted therefor: s. 80 (10), re-enacted

(10) A purchaser who takes title from a mortgagee takes title to the premises free of the priority of the liens created by subsections (2) and (5) where, Financial guarantee bond

R.S.O. 1980, c. 192

(a) a financial guarantee bond issued by a guarantee company to which the *Guarantee Companies Securities Act* applies; or

1980-81, c. 40 (Can.)

(b) a letter of credit or a guarantee from a bank named in Schedule A or B to the *Bank Act* (Canada),

in a form prescribed is registered on the title to the premises, and, upon registration, the security of the bond, letter of credit or the guarantee takes the place of the priority created by those subsections, and persons who have proved liens have a right of action against the surety on the bond or guarantee or the issuer of the letter of credit.

Home buyer's mortgage

(11) Subsections (2) and (5) do not apply to a mortgage given or assumed by a home buyer.

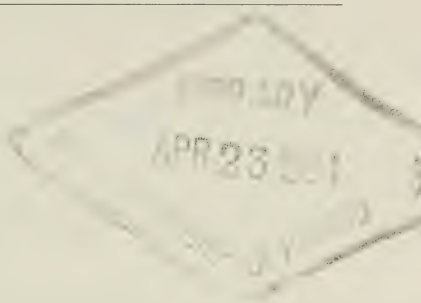
Commencement

10. This Act shall be deemed to have come into force on the 2nd day of April, 1983.

Short title

11. The short title of this Act is the *Construction Lien Amendment Act, 1983*.

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983



Bill 135

(Chapter 77
Statutes of Ontario, 1983)

An Act to amend the Construction Lien Act, 1983

The Hon. R. McMurtry
Attorney General

1st Reading	December 1st, 1983
2nd Reading	December 13th, 1983
3rd Reading	December 15th, 1983
Royal Assent	December 16th, 1983

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

Bill 135 1983

An Act to amend the Construction Lien Act, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 1 (1) of the *Construction Lien Act, 1983*, being chapter 6, is amended by adding thereto the following paragraphs: s. 1 (1), amended

7a. "home" means,

i. a self-contained one-family dwelling, detached or attached to one or more others by a common wall,

ii. a building composed of two self-contained, one-family dwellings under one ownership, or

iii. a condominium one-family dwelling unit, including the common interests appurtenant thereto,

and includes any structure or works used in conjunction therewith;

7b. "home buyer" means a person who buys the interest of an owner in a premises that is a home, whether built or not at the time the agreement of purchase and sale in respect thereof is entered into, provided,

i. not more than 30 per cent of the purchase price, excluding money held in trust under section 53 of the *Condominium Act*, is paid prior to the conveyance, and R.S.O. 1980, c. 84

ii. the home is not conveyed until it is ready for occupancy, evidenced in the case of a new home by the issuance of a municipal permit

authorizing occupancy or the issuance under the *Ontario New Home Warranties Plan Act* of a certificate of completion and possession.

R.S.O. 1980, c. 350

s. 1 (1), par. 15, amended

(2) Paragraph 15 of subsection 1 (1) of the said Act is amended by adding at the end thereof "but does not include a home buyer".

s. 1 (1), par. 29, amended

(3) Paragraph 29 of the said subsection 1 (1) is amended by striking out "lien claimant" in the second line and inserting in lieu thereof "person having a lien".

s. 3 (3), re-enacted

2. Subsection 3 (3) of the said Act is repealed and the following substituted therefor:

Architects and their employees do not have lien

(3) Despite subsection 14 (1), an architect or the holder of a certificate of practice under the *Architects Act* and the employees thereof do not have a lien.

R.S.O.1980, c. 26

s. 5, amended

3. Section 5 of the said Act is amended by adding thereto the following subsection:

Retention of holdbacks authorized

(2) Without restricting the generality of subsection (1), where the purchaser is an owner, an agreement of purchase and sale that provides for the making or completion of an improvement shall be deemed to provide for the retention of holdbacks by the purchaser, and tender by the purchaser on closing is not defective by reason only that the purchaser does not tender the amount of the holdbacks.

s. 20, amended

4. Section 20 of the said Act is amended by adding thereto the following subsection:

Where subs. (1) does not apply

(2) Subsection (1) does not apply and no general lien arises under or in respect of a contract that provides in writing that liens shall arise and expire on a lot-by-lot basis.

s. 36, amended

5. Section 36 of the said Act is amended by adding thereto the following subsection:

Where period of credit extended

(6) A person who has preserved a lien, but who has extended a period of credit for the payment of the amount to which the lien relates, may commence an action for the purpose of perfecting his lien even though the period of credit has not at the time expired.

6. Subsection 37 (2) of the said Act is amended by striking out "an application" in the first and second lines and inserting in lieu thereof "a motion". s. 37 (2), amended

7.—(1) Paragraph 1 of subsection 39 (1) of the said Act is amended by adding thereto the following subparagraph: s. 39 (1), par. 1, amended

v. a statement of whether the contract provides in writing that liens shall arise and expire on a lot-by-lot basis.

(2) Subsection 39 (1) of the said Act is amended by adding thereto the following paragraph: s. 39 (1), amended

3. By an owner who is selling his interest in a premises that is a home, with,

i. the name and address of the purchaser, the sale price, the amount of the purchase price paid or to be paid prior to the conveyance, the scheduled date of the conveyance and the lot and plan number or other legal description of the premises as contained in the agreement of purchase and sale, and

ii. the date on which a permit authorizing occupancy or a certificate of completion and possession has been issued.

8. Subsection 44 (4) of the said Act is amended by striking out "application" in the fourth line and inserting in lieu thereof "motion". s. 44 (4), amended

9.—(1) Subsection 80 (5) of the said Act is repealed and the following substituted therefor: s. 80 (5), re-enacted

(5) Where a mortgage affecting the owner's interest in the premises is registered after the time when the first lien arose in respect of an improvement, the liens arising from the improvement have priority over the mortgage to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV. Special priority against subsequent mortgages

(2) Subsection 80 (10) of the said Act is repealed and the following substituted therefor: s. 80 (10), re-enacted

(10) A purchaser who takes title from a mortgagee takes title to the premises free of the priority of the liens created by subsections (2) and (5) where, Financial guarantee bond

R.S.O. 1980, c. 192

(a) a financial guarantee bond issued by a guarantee company to which the *Guarantee Companies Securities Act* applies; or

1980-81, c. 40 (Can.)

(b) a letter of credit or a guarantee from a bank named in Schedule A or B to the *Bank Act* (Canada),

in a form prescribed is registered on the title to the premises, and, upon registration, the security of the bond, letter of credit or the guarantee takes the place of the priority created by those subsections, and persons who have proved liens have a right of action against the surety on the bond or guarantee or the issuer of the letter of credit.

Home buyer's mortgage

(11) Subsections (2) and (5) do not apply to a mortgage given or assumed by a home buyer.

Commencement

10. This Act shall be deemed to have come into force on the 2nd day of April, 1983.

Short title

11. The short title of this Act is the *Construction Lien Amendment Act, 1983*.

Government Publications

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

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Bill 136

An Act respecting the Benefits of Provincial Judges and Masters

The Hon. R. McMurtry
Attorney General

1st Reading December 1st, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTE

This Bill provides that the power of the Lieutenant Governor in Council to make regulations respecting benefits for provincial judges and masters includes power to require contributions to the cost of benefits. The Bill also clarifies that the regulations may modify or supplant the provisions that now appear in the *Public Service Superannuation Act*.

The Bill also provides a statutory foundation for the Ontario Provincial Courts Committee, which was established by order in council in 1980 to make recommendations concerning the salaries and benefits of provincial judges.

Bill 136 1983

An Act respecting the Benefits of Provincial Judges and Masters

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 100 of the *Judicature Act*, being chapter 223 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsections: R.S.O. 1980, c. 223, s. 100, amended

(1a) Regulations made under clause (1) (b) may require masters to contribute from their salaries part of the cost of benefits and may fix the amount of the contributions. Contributions

(1b) A regulation made under clause (1) (b) may modify or exclude the application of the *Public Service Superannuation Act*. Application of R.S.O. 1980, c. 419

(1c) A regulation made under clause (1) (b) may be general or particular in its application. Application of s. (1) (b)

2.—(1) Section 34 of the *Provincial Courts Act*, being chapter 398 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsections: R.S.O.1980, c. 398, s. 34, amended

(1a) Regulations made under clause (1) (d) may require judges to contribute from their salaries part of the cost of benefits and may fix the amount of the contributions. Contributions

(1b) A regulation made under clause (1) (d) may modify or exclude the application of the *Public Service Superannuation Act*. Application of R.S.O. 1980, c. 419

(2) The said Act is amended by adding thereto the following section: R.S.O. 1980, c. 398, s. 35, enacted

35.—(1) There shall be a committee to be known as the Ontario Provincial Courts Committee, composed of three members, of whom, Ontario Provincial Courts Committee

(a) one shall be appointed jointly by the Provincial Judges Association (Criminal Division), the Ontario Family Court Judges Association and the Provincial Court Judges Association of Ontario (Civil Division);

(b) one shall be appointed by the Lieutenant Governor in Council; and

(c) one, to be the chairman, shall be appointed jointly by the bodies referred to in clauses (a) and (b).

Functions

(2) The function of the Ontario Provincial Courts Committee is to inquire into and make recommendations to the Lieutenant Governor in Council respecting any matter relating to the remuneration, allowances and benefits of provincial judges, including the matters referred to in clauses 34 (1) (c) and (d).

Annual report

(3) The Ontario Provincial Courts Committee shall make an annual report of its activities to the Lieutenant Governor in Council.

Tabling of recommendations

(4) Recommendations of the Committee and its annual report under subsections (2) and (3) shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days of the commencement of the next ensuing session.

R.S.O. 1980, c. 419, s. 26, re-enacted

3. Section 26 of the *Public Service Superannuation Act*, being chapter 419 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Provincial judges and masters
R.S.O. 1980, cc. 398, 223

26. This Act applies to every full-time provincial judge and to every full-time master of the Supreme Court, subject to the *Provincial Courts Act* and the *Judicature Act* and the regulations under those Acts.

Commencement

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is the *Provincial Judges and Masters Statute Law Amendment Act, 1983*.

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983



Bill 136

(Chapter 78
Statutes of Ontario, 1983)

An Act respecting the Benefits of Provincial Judges and Masters

The Hon. R. McMurtry
Attorney General

1st Reading	December 1st, 1983
2nd Reading	December 13th, 1983
3rd Reading	December 15th, 1983
Royal Assent	December 16th, 1983

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

Bill 136 1983

An Act respecting the Benefits of Provincial Judges and Masters

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 100 of the *Judicature Act*, being chapter 223 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsections: R.S.O. 1980, c. 223, s. 100, amended

(1a) Regulations made under clause (1) (b) may require masters to contribute from their salaries part of the cost of benefits and may fix the amount of the contributions. Contributions

(1b) A regulation made under clause (1) (b) may modify or exclude the application of the *Public Service Superannuation Act*. Application of R.S.O. 1980, c. 419

(1c) A regulation made under clause (1) (b) may be general or particular in its application. Application of s. (1) (b)

2.—(1) Section 34 of the *Provincial Courts Act*, being chapter 398 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsections: R.S.O.1980, c. 398, s. 34, amended

(1a) Regulations made under clause (1) (d) may require judges to contribute from their salaries part of the cost of benefits and may fix the amount of the contributions. Contributions

(1b) A regulation made under clause (1) (d) may modify or exclude the application of the *Public Service Superannuation Act*. Application of R.S.O. 1980, c. 419

(2) The said Act is amended by adding thereto the following section: R.S.O. 1980, c. 398, s. 35, enacted

35.—(1) There shall be a committee to be known as the Ontario Provincial Courts Committee, composed of three members, of whom, Ontario Provincial Courts Committee

(a) one shall be appointed jointly by the Provincial Judges Association (Criminal Division), the Ontario Family Court Judges Association and the Provincial Court Judges Association of Ontario (Civil Division);

(b) one shall be appointed by the Lieutenant Governor in Council; and

(c) one, to be the chairman, shall be appointed jointly by the bodies referred to in clauses (a) and (b).

Functions

(2) The function of the Ontario Provincial Courts Committee is to inquire into and make recommendations to the Lieutenant Governor in Council respecting any matter relating to the remuneration, allowances and benefits of provincial judges, including the matters referred to in clauses 34 (1) (c) and (d).

Annual report

(3) The Ontario Provincial Courts Committee shall make an annual report of its activities to the Lieutenant Governor in Council.

Tabling of recommendations

(4) Recommendations of the Committee and its annual report under subsections (2) and (3) shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days of the commencement of the next ensuing session.

R.S.O. 1980, c. 419, s. 26, re-enacted

3. Section 26 of the *Public Service Superannuation Act*, being chapter 419 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Provincial judges and masters
R.S.O. 1980, cc. 398, 223

26. This Act applies to every full-time provincial judge and to every full-time master of the Supreme Court, subject to the *Provincial Courts Act* and the *Judicature Act* and the regulations under those Acts.

Commencement

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is the *Provincial Judges and Masters Statute Law Amendment Act, 1983*.

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983



Bill 137

An Act to amend the Municipality of Metropolitan Toronto Act

The Hon. C. Bennett
Minister of Municipal Affairs and Housing

1st Reading December 2nd, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTES

SECTIONS 1, 2, 3, 6, 7, 8. References in the Act to the boroughs of Etobicoke, Scarborough and York are changed to read as references to the cities of Etobicoke, Scarborough and York.

SECTION 4. The proposed amendments to section 17 of the Act delete obsolete references to sections 63 and 64 of the *Municipal Act* which were repealed by the *Municipal Conflict of Interest Act, 1983*.

SECTION 5. Section 19 of the Act requires the Metropolitan clerk to supply copies of municipal documents. Under the Act, as it now reads, the clerk must charge a rate of 15 cents for each 100 words or such lower rate as the Metropolitan Council may fix. The amendment will give the municipality the same flexibility as local and county municipalities and The Regional Municipality of Ottawa-Carleton have with respect to charging fees for photocopying.

SECTION 9. Because of recent amendments to the *Municipal Elections Act*, the reference in subsection 152 (5) to biennial elections is now obsolete. It is proposed that this reference be changed to read as a reference to regular elections.

SECTION 10. Until 1982, the Metropolitan Council was required to provide for reserves in its estimates "within such limits as to type and amount as the Ministry may approve". In 1982, the Act was amended and the provisions related to reserves was deleted. The re-enactment of subsection 218 (2) restores the requirement to provide for reserves but Ministry approval will not be required. This provision will be deemed to have come into force on the 1st day of January, 1975. This will have the effect of validating reserves that were provided for in the estimates after that date without Ministry approval.

SECTION 11.—Subsection 1. Sections 104a and 121 are added as sections of the *Municipal Act* that apply to the Metropolitan Corporation. Section 104a clarifies the ability of a municipality to enact enforceable bilingual by-laws and to conduct its proceedings in English or French or English and French. Section 121 permits a municipal council to pass by-laws for entering into and performing agreements with other municipalities with respect to joint works and undertakings.

Subsection 2. Obsolete references to the alteration of the boundaries of area municipalities are deleted.

SECTION 12. References to the townships of Etobicoke and Scarborough are changed to read as references to the cities of Etobicoke and Scarborough.

SECTION 13. The re-enactment of section 264 of the Act deletes unnecessary references to the boroughs of Etobicoke, Scarborough and York. The effect of this section is to deem East York to be a city for the purposes of establishing speed limits under the *Highway Traffic Act*.

Bill 137 1983

An Act to amend the Municipality of Metropolitan Toronto Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clauses 1 (a) and (h) of the *Municipality of Metropolitan Toronto Act*, being chapter 314 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor: s. 1 (a, h), re-enacted

(a) "area municipality" means the municipality or corporation of the Borough of East York, the City of Etobicoke, the City of North York, the City of Scarborough, the City of Toronto or the City of York;

. . . . .

(h) "Metropolitan Area" means the area from time to time included within the Borough of East York, the City of Etobicoke, the City of North York, the City of Scarborough, the City of Toronto and the City of York.

2. Subsection 5 (1) of the said Act is repealed and the following substituted therefor: s. 5 (1), re-enacted

(1) The area municipalities are entitled to the following membership on the Metropolitan Council: Metropolitan Council membership

the Borough of East York — 2 members

the City of Etobicoke — 5 members

the City of North York —10 members

the City of Scarborough — 7 members

the City of Toronto	—12 members
the City of York	— 3 members

s. 11 (1) (c), amended

3.—(1) Clause 11 (1) (c) of the said Act is amended by striking out "Borough" in the first line and inserting in lieu thereof "City".

s. 11 (1) (e), amended

(2) Clause 11 (1) (e) of the said Act is amended by striking out "Borough" in the first line and inserting in lieu thereof "City".

s. 17 (1), amended

4.—(1) Subsection 17 (1) of the said Act is amended by striking out "63" in the first line.

s. 17 (2), amended

(2) Subsection 17 (2) of the said Act is amended by striking out "64" in the first line.

s. 19 (1), amended

5. Subsection 19 (1) of the said Act is amended by striking out "at the rate of 15 cents for every 100 words or at such lower rate as the Metropolitan Council may fix" in the ninth, tenth and eleventh lines and inserting in lieu thereof "at such rate as the Metropolitan Council may by by-law establish".

s. 27 (1), amended

6.—(1) Subsection 27 (1) of the said Act is amended by striking out "Borough" in the second line and inserting in lieu thereof "City".

Idem

(2) The said subsection 27 (1) is further amended by striking out "or Borough" in the third line.

s. 118 (1) (b, d, f), re-enacted

7.—(1) Clauses 118 (1) (b), (d) and (f) of the said Act are repealed and the following substituted therefor:

(b) The Board of Education for the City of Etobicoke;

. . . . .

(d) The Board of Education for the City of Scarborough;

. . . . .

(f) The Board of Education for the City of York.

s. 118 (2) (a), re-enacted

(2) Clause 118 (2) (a) of the said Act is repealed and the following substituted therefor:

(a) for the cities of Toronto and Etobicoke and for the Borough of East York shall be two in each ward of the City or Borough as the case may be.

s. 121 (2) (a, c), re-enacted

8.—(1) Clauses 121 (2) (a) and (c) of the said Act are repealed and the following substituted therefor:

(a) one member of and appointed by The Board of Education for the City of Etobicoke;

. . . . . .

(c) three members of and appointed by The Board of Education for the City of Scarborough.

s. 121 (3), amended

(2) Subsection 121 (3) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 9, section 3, is further amended by striking out "Borough" in the second line and in the third line and inserting in lieu thereof in each instance "City".

s. 152 (5), amended

9. Subsection 152 (5) of the said Act is amended by striking out "biennial" in the second line and inserting in lieu thereof "regular".

s. 218 (2), re-enacted

10. Subsection 218 (2) of the said Act, as re-enacted by the Statutes of Ontario, 1982, chapter 29, section 11, is repealed and the following substituted therefor:

Allowance to be made in estimates

(2) In preparing the estimates, the Metropolitan Council shall make due allowance for a surplus of any previous year that will be available during the current year and shall provide for any operating deficit of any previous year and for such reserves as the Metropolitan Council considers necessary.

s. 245 (1), re-enacted

11.—(1) Subsection 245 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1982, chapter 29, section 13, is repealed and the following substituted therefor:

Application of R.S.O. 1980, c. 302

(1) Section 5, Parts XIII, XIV, XV and XIX, sections 104a, 105, 106, 113, 114, 115, 116, 121 and 122, subsection 165 (3), paragraphs 3, 11, 12, 23, 24, 27, 30, 50 and 54 of section 208, subparagraph ii of paragraph 125 of section 210, and paragraph 10 of section 315 of the *Municipal Act* apply with necessary modifications to the Metropolitan Corporation.

s. 245 (2), re-enacted

(2) Subsection 245 (2) of the said Act is repealed and the following substituted therefor:

Exceptions

(2) Sections 10 and 11 of the *Municipal Act* do not apply to any area municipality.

s. 261 (1), amended

12. Subsection 261 (1) of the said Act is amended by striking out "Township" in the third line, in the fourth line, in the eighth line and in the tenth line and inserting in lieu thereof in each instance "City".

s. 264, re-enacted

13. Section 264 of the said Act is repealed and the following substituted therefor:

Borough deemed to be city under R.S.O. 1980, c. 198, s. 109

264. For the purpose of section 109 of the *Highway Traffic Act*, the Borough of East York shall be deemed to be a city.

Commencement

14.—(1) This Act, except section 10, comes into force on the day it receives Royal Assent.

Idem

(2) Section 10 shall be deemed to have come into force on the 1st day of January, 1975.

Short title

15. The short title of this Act is the *Municipality of Metropolitan Toronto Amendment Act, 1983*.

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983



Bill 138

An Act respecting the Sale of Lands for Arrears of Municipal Taxes

The Hon. C. Bennett
Minister of Municipal Affairs and Housing

1st Reading December 2nd, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTES

The purpose of the Bill is to establish one system for the sale of land with respect to which tax arrears are owed to a municipality. The Bill replaces the two different systems now in existence under the *Municipal Act* and *Municipal Affairs Act.*

Among the principal features of the Bill are the following:

1. The Act contains an extensive definition section. Particularly important are the definitions of "cancellation price", "real property taxes" and "tax arrears". (s. 1 (1))
2. The Act applies to sales of land for tax arrears owed to school boards in areas without municipal organization. (s. 1 (2))
3. The treasurer of a municipality to which any part of tax arrears are owed on the 1st day of January in the third year following the year in which the real property taxes become payable commences the procedure by registering a tax arrears certificate in the proper land registry office. (s. 3 (1))
4. A municipality may pass by-laws instructing the treasurer not to register a tax certificate against any class of land specified in the by-laws or land that is owned or occupied by any class of persons specified in the by-laws. (s. 3 (2))
5. Within sixty days of the registration of a tax arrears certificate, the treasurer is required to send notices to interested parties advising them that a tax arrears certificate has been registered. (s. 4)
6. Any person may prevent a sale by paying the cancellation price within one year from the day of the registration of a tax arrears certificate. (s. 5)
7. An owner may prevent a sale by either paying the tax arrears or entering into an agreement with the municipality for an extension of the time in which the owner has to pay the taxes. (ss. 5, 8)
8. The treasurer, 301 days after the registration of the tax arrears certificate, will be required to send a second notice to all interested parties warning them that the land will be sold unless the cancellation price is paid before the expiry of the one-year period following the registration of the tax arrears certificates. (s. 9 (1))
9. If the cancellation price has not been paid and no extension agreement has been entered into one year from the date of the registration of the tax arrears certificate, the treasurer must advertise the land for sale in *The Ontario Gazette* and the local press. (s. 9 (3))
10. A sale will be by public tender conducted in accordance with the regulations made under the Act and a tax deed must be registered in the name of the successful tenderer. (s. 9 (4))
11. If there is no successful tenderer or the successful tenderer and the alternate successful tenderers fail to pay the amount tendered, the land will vest in the municipality. (s. 9 (4))
12. The registration of the tax deed or notice of vesting vests the land in the successful tenderer or the municipality, as the case may be, free and clear of all interests except those of the Crown in right of Canada or in right of Ontario and easements and restrictive covenants that run with the land. (s. 9 (5))
13. The proceeds of the sale will be applied first to satisfy the cancellation price, secondly to interested parties other than the owner and thirdly to the owner. (s. 10 (1))
14. If a dispute arises over the amount of the cancellation price or the proceeds of the sale, an application may be made to the county court for a resolution of the matter. (ss. 6, 10 (3-5))
15. A tax purchaser's title will be protected from claims against the land that arose prior to the sale. (s. 13)

16. The rules to be followed in selling land for tax arrears will be prescribed by regulation. (s. 17)

17. Complementary amendments are made to other Acts to abolish existing tax sale procedures. (ss. 18-20)

Bill 138 1983

An Act respecting the Sale of Lands for Arrears of Municipal Taxes

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act, Interpretation

(a) "cancellation price" means an amount equal to all the tax arrears owing in respect of land together with all current real property taxes, interest and penalties thereon and all reasonable costs incurred by the municipality in proceeding under this Act and, without restricting the generality of the foregoing, may include,

(i) legal fees and disbursements,

(ii) the costs of preparing an extension agreement entered into under section 8,

(iii) the costs of preparing a survey where such is required to register any document under this Act, and

(iv) a reasonable allowance for expenses that may be incurred after advertising under section 9;

(b) "county court" means the county or district court for the jurisdiction in which the land that is subject to proceedings under this Act is located;

(c) "improved land" means a parcel of land separately assessed that has a building thereon, and includes any land in actual use for agricultural purposes, although there is no building thereon;

(d) "municipality" means the corporation of a city, town, village, township or improvement district;

(e) "notice of vesting" means a notice of vesting prepared under subsection 9 (4) and includes the title conferred by the registration of the notice of vesting;

(f) "prescribed" means prescribed by the regulations made under this Act;

R.S.O. 1980, cc. 302, 129, 359, 250, 126, 500, 471

(g) "real property taxes" means the amount of taxes levied on real property under the *Municipal Act*, the *Education Act* and the *Ontario Unconditional Grants Act*, and any amounts owed under the *Local Improvement Act*, the *Drainage Act*, the *Tile Drainage Act* and the *Shoreline Property Assistance Act* with respect to the real property and includes any amounts deemed to be taxes on real property by or under any other general or special Act;

(h) "register" means register in the proper land registry office and "registered" and "registration" have a corresponding meaning;

(i) "tax arrears" means any real property taxes placed on or added to a collector's roll and which remain unpaid on the first day of January in the year following that in which they were placed on or added to the roll;

(j) "tax arrears certificate" means a tax arrears certificate prepared under subsection 3 (1);

(k) "tax deed" means a tax deed prepared under subsection 9 (4) and includes the title conferred by the registration of the tax deed;

(l) "treasurer" means the treasurer of the municipality to which the tax arrears are owed;

(m) "vacant land" means a parcel of land separately assessed that has no building thereon, but does not include any improved land.

Application to tax sales under R.S.O. 1980, c. 129

(2) Where, under the *Education Act*, an officer or collector has the powers and duties of a treasurer and the board has the powers and duties of a council, this Act and the regulations made under this Act apply to tax arrears and to every sale of land for tax arrears owed to the Board.

(3) In subsections 4 (1) and 9 (2), Register of title, abstract index

(a) "register of title" and "abstract index" include an instrument received for registration before the closing of the land registry office on the day the tax arrears certificate was registered notwithstanding that the instrument has not been abstracted or entered in the register or index at that time;

(b) "index of executions" and "index of writs received for execution" include a warrant or other process or a certificate of lien that is filed with the sheriff and recorded in the index of executions under the *Land Titles Act* or in the index of writs received for execution by the sheriff, as the case may be. R.S.O. 1980, c. 230

2. The Minister of Municipal Affairs and Housing is responsible for the administration of this Act. Administration

3.—(1) Where any part of tax arrears are owing with respect to any land in a municipality on the first day of January in the third year following that in which the real property taxes became payable, the treasurer shall prepare and register a tax arrears certificate in the prescribed form against the title to the land. Tax arrears certificate, registration

(2) Notwithstanding subsection (1), the council of the municipality may pass a by-law directing the treasurer not to register a tax arrears certificate against the title to any land that falls within such class or classes of property specified in the by-law or that is owned or occupied by such class or classes of persons specified in the by-law. Exception

(3) A tax arrears certificate shall indicate that the land described in the certificate will be advertised for sale by public tender if the cancellation price is not paid within one year following the date of the registration of the tax arrears certificate. Form

(4) This Act does not apply to land that under the *Business Corporations Act, 1982* or the *Corporations Act* escheated to or became forfeited to the Crown before the registration of a tax arrears certificate but where land escheats or becomes forfeited under either of those Acts to the Crown after the registration of the tax arrears certificate, the tax arrears certificate continues to have effect and the land may be sold under this Act for tax arrears. Escheated land 1982, c. 4; R.S.O. 1980, c. 95

(5) A tax arrears certificate of improved land shall not embrace more than one such property or any vacant land that is What lands certificate may embrace

a separate parcel, and a tax arrears certificate of vacant land shall not embrace lots according to more than one registered plan or any improved land.

Notice

4.—(1) Within sixty days of the registration of a tax arrears certificate, the treasurer shall send or cause to be sent a notice in the prescribed form of the registration of the certificate to the following persons:

1. The assessed owner of the land.

2. Assessed tenants of the land.

R.S.O. 1980, c. 230

3. Where the land is registered under the *Land Titles Act*, to every person appearing by the register of title and by the index of executions to have an interest in the land as of the time of closing of the land registry office on the day the tax arrears certificate was registered.

R.S.O. 1980, c. 445

4. Where the *Registry Act* applies to the land, to every person appearing by the abstract index and by the index of writs received for execution by the sheriff of the county or district in which the land is situate to have an interest in the land as of the time of closing of the land registry office on the day the tax arrears certificate was registered.

Corporations

(2) Where a notice has been sent under subsection (1) to a corporation, the treasurer shall, within the time limit in subsection (1), send a copy of the notice to the Public Trustee.

Statutory declaration

(3) The treasurer, forthwith after complying with subsection (1), shall make and register a statutory declaration in the prescribed form stating the names and addresses of the persons to whom notice was sent.

Cancellation

5.—(1) Any person may, before the expiry of the one-year period mentioned in subsection 9 (1) have the tax arrears certificate cancelled by paying to the municipality the cancellation price as of the date the payment is tendered.

Cancellation certificate

(2) Where payment has been made under subsection (1), the treasurer shall forthwith register a tax arrears cancellation certificate in the prescribed form.

Lien

(3) If the cancellation price is paid by a person to whom notice has been given under subsection 4 (1) or an assignee of any such person, other than the owner of the land, the person has a lien on the land concerned for the amount paid.

(4) A lien under subsection (3) has priority over the interest of any other person who has an interest in the land. Priority of lien

(5) Where there is a lien under subsection (3), the tax arrears cancellation certificate shall state that the person named therein has a lien on the land. Contents of certificate

6.—(1) Where a person pays the cancellation price before the expiry of the one-year period mentioned in subsection 9 (1), the person within thirty days after paying the cancellation price, may require the treasurer to provide an itemized breakdown of the calculation of the cancellation price that has been paid and where the treasurer fails to provide the itemized breakdown of the calculation within thirty days of the request or where the person is of the opinion that the cancellation price so calculated has not been calculated properly or the costs included in the cancellation price by the municipality as costs incurred in proceeding under this Act are unreasonable, the person may apply to the county court for an accounting of the cancellation price. Accounting

(2) Upon an application for an accounting under this section, the court shall determine the matter and if the court determines that the cancellation price was not calculated properly or the costs included in the cancellation price are unreasonable, it may make an order setting a cancellation price which is proper and reasonable but no such order shall relieve a taxpayer of any liability to pay any validly imposed real property taxes. Idem

7.—(1) A tax arrears cancellation certificate, when registered, is conclusive proof of the cancellation of the tax arrears certificate to which it relates but, except as provided in subsection (2), does not affect the municipality's claim for tax arrears owing on the date the cancellation certificate was registered. Effect of registration

(2) A tax arrears cancellation certificate registered under section 5 or 8 is conclusive proof of the payment of the cancellation price as of the date set out in the tax arrears cancellation certificate. Idem

8.—(1) A municipality may by by-law before the expiry of the one-year period mentioned in subsection 9 (1), authorize an extension agreement with the owner of the land extending the period of time in which the cancellation price is to be paid and any such extension agreement may be subject to such terms and conditions as are set out in the agreement but it shall not reduce the amount of the cancellation price. Extension agreements

Mandatory contents

(2) Every extension agreement entered into under this section shall specify when and under what circumstances it shall cease to be considered a subsisting extension agreement.

Calculation of time

(3) The period during which there is a subsisting extension agreement shall not be counted by the treasurer in calculating the periods mentioned in subsection 9 (1).

Inspection of extension agreement

R.S.O. 1980, c. 302

(4) The treasurer on the request of any person, shall permit the person to inspect a copy of an extension agreement entered into under this section and shall provide copies thereof at the same rate as is charged under section 78 of the *Municipal Act*.

Cancellation certificate

(5) When the terms of an extension agreement have been fulfilled, the treasurer shall forthwith register a tax arrears cancellation certificate in the prescribed form.

Notice of sale

9.—(1) If the cancellation price remains unpaid at the expiry of the period of 301 days from the day of the registration of the tax arrears certificate, the treasurer shall forthwith send or cause to be sent to the persons referred to in subsection (2), a notice in the prescribed form that the land will be advertised for sale by public tender unless the cancellation price is paid before the end of the one-year period following the date of the registration of the tax arrears certificate.

Idem

(2) A notice under subsection (1) shall be sent to every person to whom notice was sent under section 4 and to every person who after the registration of the tax arrears certificate and before the closing of the land registry office on the day 301 days from the day of the registration of the tax arrears certificate has become one of the following:

1. The assessed owner of the land.

2. An assessed tenant of the land.

R.S.O. 1980, c. 230

3. Where the land is registered under the *Land Titles Act*, to every person appearing by the register of title and by the index of executions to have an interest in the land as of the time of closing of the land registry office.

R.S.O. 1980, c. 445

4. Where the *Registry Act* applies to the land, to every person appearing by the abstract index and by the index of writs received for execution by the sheriff of the county or district in which the land is situate to have an interest in the land as of the time of closing of the land registry office.

Advertisement

(3) If, at the end of one year following the day of registration of the tax arrears certificate,

(a) the cancellation price remains unpaid; and

(b) no extension agreement has been entered into under subsection 7 (1),

the land shall be sold by public tender and the treasurer shall forthwith,

(c) make and register a statutory declaration in the prescribed form stating the names and addresses of the persons to whom notice was sent under subsection (1); and

(d) advertise the land for sale once in *The Ontario Gazette* and once a week for four weeks in a newspaper having general circulation in the municipality and, where there is no such newspaper, the treasurer shall post notice in the municipal office and one other prominent place in the municipality and the advertisement shall be in the prescribed form.

Sale by tender

(4) The treasurer, in accordance with the prescribed rules, shall conduct a sale by tender and determine whether there is a successful tenderer and,

(a) where there is a successful tenderer, the treasurer shall prepare and register a tax deed in the prescribed form in the name of the successful tenderer or in such name as the successful tenderer may direct; and

(b) where there is no successful tenderer or the successful tenderer and every alternate successful tenderer, if any, fails to pay the full amount tendered, the treasurer shall prepare and register, in the name of the municipality, a notice of vesting in the prescribed form.

Effect of conveyance

(5) A tax deed or notice of vesting, when registered, vests the land in the person named therein or in the municipality, as the case may be, with an estate in fee simple in the land, together with all rights, privileges and appurtenances, free from all estates and interests subject only to,

(a) easements and restrictive covenants that run with the land; and

(b) any estates and interests of the Crown in right of Canada or in right of Ontario.

No warranty

(6) A tax deed does not,

(a) impose an obligation on the municipality to provide vacant possession; or

(b) invalidate or in any way affect the collection of a rate that has been assessed, imposed or charged on the land under any Act by the municipality before the registration of the tax deed and that accrues or becomes due after the registration of the tax deed.

Municipal tender

(7) The municipality to which the tax arrears are owed may submit a tender in a sale by tender under this section if the municipality intends to use the land for a municipal purpose.

Application or proceeds

10.—(1) The proceeds of a sale under section 9 shall be,

(a) firstly, applied to pay the cancellation price in satisfaction of the tax arrears, current real property taxes, interest and penalties thereon and all other costs and allowances claimed under this Act as of the day next following the last day for submitting tenders;

(b) secondly, paid to all other persons, other than the owner, having an interest in the land according to their priority at law; and

(c) thirdly, paid to the person who immediately before the registration of the tax deed was the owner of the land or paid to the municipality where the registered owner has forfeited all entitlement in the proceeds under subsection (2).

Claims

(2) Any party claiming entitlement under clause (1) (b) or (c) must establish a claim to the satisfaction of the treasurer within ninety days of the public tender opening or forfeit to the municipality all entitlement in the proceeds of the sale.

Disputes

(3) Where, before the treasurer makes a payment under clause (1) (b) or (c), there is a question as to who is entitled to receive payment under subsection (1), the treasurer may pay the proceeds of sale, minus the cancellation price, into the county court together with a statement outlining the facts under which the payment into court is made.

Parties

(4) Where a payment is made into court under subsection (3), any party claiming an entitlement to receive payment

under subsection (1) may make application to the county court for payment out of the proceeds to which the party claims entitlement and on such application the judge shall determine all of the entitlements including any questions as to the calculation of the cancellation price and the reasonableness of costs included in the cancellation price by the municipality as costs incurred in proceeding under this Act.

Where cancellation price not calculated properly

(5) If the court determines that the cancellation price was not calculated properly or the costs included in the cancellation price are unreasonable, it may make an order setting a cancellation price which is proper and reasonable but no such order shall relieve a taxpayer of any liability to pay any validly imposed real property taxes.

Mailing of notice

11.—(1) Any notice required to be sent to any person under this Act may be served in any manner permitted under the Rules of the Supreme Court or, in the alternative, may be sent by certified or registered mail,

(a) to the address of the person as shown on the assessment roll of the municipality in the case of the assessed owner or an assessed tenant;

(b) in the case of any person whose interest is registered against the title of the land, to the address of the person furnished under section 166 of the *Land Titles Act* or section 37 of the *Registry Act* or where no such address has been furnished, addressed to the solicitor whose name appears on the registered instrument by which that person appears to have an interest;

R.S.O. 1980, cc. 230, 445

(c) in the case of an execution creditor, to the address of the execution creditor or execution creditor's solicitor as shown in the records of the sheriff of the county or district in which the land is situate; and

(d) in the case of the Public Trustee, addressed to him or her at his or her office in Toronto.

Statutory declaration, effect

(2) A statutory declaration registered under subsection 4 (3) or clause 9 (3) (a) is,

(a) for the purposes of an action for the recovery of the land, conclusive proof that the notices required to be sent were sent to the persons named in the statutory declaration and received by them; and

(b) for any other action, is *prima facie* proof that the notices required to be sent were sent to the persons

named in the statutory declaration and received by them.

Where tax arrears certificate void

12.—(1) Subject to subsection 13 (4),

(a) a failure on the part of the treasurer to substantially comply with subsection 4 (1), (2), or 9 (1) of this Act or section 43 of the *Family Law Reform Act* voids the registration of the tax arrears certificate and all proceedings based on the registration are void; and

R.S.O. 1980, c. 152

(b) a tax arrears certificate registered in error is void and all proceedings based on the registration are void.

Duty of treasurer

(2) Where, before the registration of a tax deed or, where a notice of vesting has been registered, before the expiry of the one-year period referred to in subsection 13 (4), the treasurer becomes aware of a failure or error referred to in subsection (1), the treasurer shall forthwith register a tax arrears cancellation certificate in the prescribed form.

Distress

13.—(1) No registered tax deed or notice of vesting is invalid by reason of the treasurer not having distrained, though there were on the land goods and chattels liable to distress before or at the time of the registration of the tax deed or notice of vesting.

Errors in cancellation price

(2) No registered tax deed or notice of vesting is invalid for any error or miscalculation in the cancellation price and this subsection applies notwithstanding that the cancellation price as advertised was more or less than the cancellation price would have been but for the error or miscalculation.

Effect of registration where conditions satisfied

(3) Every tax deed and notice of vesting is final and binding, as of the date of registration thereof, on the former owner of the land and on all persons claiming by, through or under the former owner if,

(a) any part of the taxes for which the land was sold under this Act had at the time of the registration of the tax arrears certificate been in arrears for the period referred to in subsection 3 (1);

(b) a tax arrears certificate was registered at least one year before the lands were advertised for sale;

(c) notices were sent and the statutory declarations were registered in substantial compliance with this Act and the regulations made under this Act;

(d) the cancellation price was not paid within one year following the date of the registration of the tax arrears certificate;

(e) the land was advertised, in substantial compliance with this Act and the regulations made under this Act, for sale by tender; and

(f) in the case of a tax deed, the purchaser tendered an amount equal to or greater than the cancellation price,

and this subsection applies notwithstanding any neglect, omission or error of the municipality or of any employee, officer or agent of the municipality in respect of imposing or levying such taxes or in any proceedings subsequent thereto.

Tax deed, notice of vesting not subject to challenge after one year

(4) Every registered tax deed and notice of vesting becomes final and binding and not subject to challenge for any reason including, without limiting the generality of the foregoing,

(a) the invalidity of any assessment upon which the tax arrears were based; and

(b) the breach of any requirement imposed by statute or otherwise by law,

unless questioned before a court of competent jurisdiction within one year from the date of registration of the tax deed or notice of vesting.

Limitation on action for damages

(5) No action for damages shall be commenced against the municipality or the treasurer in respect of any failure to comply with this Act, any defects in any of the proceedings under this Act after two years from the date of registration of the tax deed or notice of vesting.

Mining rights R.S.O. 1980, c. 268

14.—(1) Where land, the mining rights in which are liable for a tax imposed under the *Mining Act*, is sold for taxes or is vested in a municipality under this Act or under a predecessor of this Act, on or after the 1st day of April, 1954, such sale or vesting creates a severance of the surface rights from the mining rights, and only the surface rights in the land pass to the tax sale purchaser or vest in the municipality, as the case may be, and the sale or registration does not in any way affect the mining rights.

Idem

(2) Notwithstanding subsection (1) or anything else in this or any other Act but subject to any forfeiture to the Crown legally

R.S.O. 1980, cc. 269, 302, 303

effected under the *Mining Tax Act* or its predecessor, where land the mining rights in which were liable for area tax under the *Mining Tax Act* or its predecessor, was sold for taxes under the *Municipal Act or* any predecessor thereof or was vested in a municipality upon registration of a tax arrears certificate under the *Municipal Affairs Act* or any predecessor thereof before the 1st day of April, 1954, and there had been, before the sale or registration, no severance of the surface rights from the mining rights, and the sale or certificate purported to vest all rights in the land in the tax sale purchaser or in the municipality, as the case may be, such sale or certificate shall be deemed to have vested in the tax sale purchaser or in the municipality, without severance, both the surface and mining rights.

Certain contracts continued

15. No valid contract entered into between a purchaser of lands under this Act and an original owner, in regard to any land sold or assumed to have been sold for taxes as to purchase, lease or otherwise, is annulled or interfered with by this Act, but such contract and all consequences thereof, as to admission of title or otherwise, remain in force as if this Act had not been passed.

Indemnification

16. A municipality shall indemnify and save harmless its treasurer in respect of all actions brought against the treasurer for any proceedings or acts of the treasurer taken or done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act or a regulation made under this Act, or for any neglect or default in the performance or exercise in good faith of such duty or power.

Regulations

17. The Lieutenant Governor in Council may make regulations,

(a) prescribing forms in English or in English and French and providing for their use; and

(b) prescribing rules for the sale of lands under this Act by public tender and, without restricting the generality of the foregoing, the rules,

(i) may require that tenderers submit deposits with their tenders in such amount and in such form as may be set out in the rules,

(ii) may set out the method of determining the successful tenderer, and providing for the selection of alternate successful tenderers where a successful tenderer fails to pay the full amount tendered,

(iii) may provide for the forfeiture of deposits made by persons named as successful tenderers, where such persons fail to pay the balance of the amount tendered within such time as may be set out in the rules and provide for the disposition of deposits so forfeited, and

(iv) shall provide that all tenders that are less than the cancellation price as of the day next following the last day for submitting tenders shall be rejected.

Repeals R.S.O. 1980, c. 303

18. Clause 6 (b), sections 20, 40 to 47, 49 and 50, subsections 64 (2) and (3) and Forms 1 to 4 of the *Municipal Affairs Act*, being chapter 303 of the Revised Statutes of Ontario, 1980, are repealed.

Repeals R.S.O. 1980, c. 302

19.—(1) Sections 397, 400, 402 to 405, 413 to 418, 420 to 464, 466, 469, 471 and 472 and Form 9 of the *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, are repealed.

s. 399, amended

(2) Section 399 of the said Act is amended by striking out "county or other" in the first line.

s. 401, amended

(3) Section 401 of the said Act is amended by striking out "county treasurer and the" in the first line.

s. 409, re-enacted

(4) Section 409 of the said Act is repealed and the following substituted therefor:

Treasurer to keep duplicate receipt book

409. The treasurer of a local municipality shall keep a duplicate blank receipt book, and on receipt of any sum of money for taxes on land shall deliver to the person making the payment one of such receipts, retaining the second of the set in the book, and the auditors shall examine and audit such books and accounts at least once in every year.

s. 409, re-enacted

(5) Section 419 of the said Act is repealed and the following substituted therefor:

Where distress on premises, treasurer may distrain

419. If there are to the knowledge of the treasurer goods and chattels liable to distress upon any land in arrear for taxes, he may levy the arrears of taxes and the costs by distress, and has the same authority to collect by distress as a collector has under this Act, and section 387 applies thereto.

ss. 491-494, re-enacted

(6) Sections 491 to 494 of the said Act are repealed and the following substituted therefor:

Municipality responsible for such money

491. Every municipality is responsible to Her Majesty, and to all other persons interested, that all money coming into the hands of the treasurer of the municipality in virtue of the treasurer's office shall be duly paid over and accounted for by the treasurer according to law.

Treasurer, etc., responsible to municipality

492. The treasurer and the treasurer's sureties are responsible and accountable for such money to the municipality and any bond or security given by them for the duly accounting for and paying over money belonging to the municipality applies to all money mentioned in section 484 and may be enforced against the treasurer or the treasurer's sureties in case of default.

Bonds to apply to school money

493. The bond of the treasurer and the treasurer's sureties applies to school money and to all public money of Ontario and, in case of default, Her Majesty may enforce the responsibility of the municipality by stopping a like amount out of any public money that would otherwise be payable to the municipality or to the treasurer thereof, or by action against the corporation.

City, etc., responsible for default of treasurer, etc.

494. Any person aggrieved by the default of the treasurer may recover from the municipality the amount due or payable to such person as money had and received to the person's use.

Form 8, amended

(7) Form 8 of the said Act is amended by striking out the following paragraph:

"I hereby certify that the above statement shows all arrears of taxes returned to this office against the above lands, and that no part of the lands has been sold for taxes and no certificate of tax arrears has been registered against the lands within the last eighteen months, and that the return under section 397 of the *Municipal Act* has been made for the year 19..."

and inserting in lieu thereof:

"I hereby certify that the above statement shows all arrears of taxes against the above lands and proceedings have (not) been commenced under the *Municipal Tax Sales Act, 1983*."

R.S.O. 1980, c. 129, s. 53 (1), amended

20.—(1) Subsection 53 (1) of the *Education Act*, being chapter 129 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1982, chapter 32, section 14, is further amended by inserting after "duties" in the eleventh line "including the powers and duties with respect to the sale of land for tax arrears" and by striking out "67 (5) to (12)" in the twelfth and thirteenth lines and inserting in lieu thereof "67 (5), (6) and (12)".

(2) Subsection 67 (1) of the said Act is amended by inserting after "duties" in the seventh line "including the powers and duties with respect to the sale of land for tax arrears". s. 67 (1), amended

(3) Subsections 67 (6) to (11) of the said Act are repealed and the following substituted therefor: s. 67 (6), re-enacted; s. 67 (7-11), repealed

(6) The board of a district school area shall name one of its officers as the officer of the board responsible for the sale of land for tax arrears and that officer has the same powers and duties as a treasurer under the *Municipal Tax Sales Act, 1983* and the board has the same powers and duties as a council under that Act. Tax sales officer; 1983, c...

(4) Subsection 69 (3) of the said Act is amended by inserting after "duties" in the sixth line "including the powers and duties with respect to the sale of land for tax arrears". s. 69 (3), amended

(5) Subsection 69 (6) of the said Act is amended by striking out "67 (5) to (12)" in the first line and inserting in lieu thereof "67 (5), (6) and (12)". s. 69 (6), amended

(6) Subsection 99 (2) of the said Act is repealed and the following substituted therefor: s. 99 (2), re-enacted

(2) Every collector has the same powers in collecting the school rate, rate-bill or subscription and is under the same liabilities and obligations and shall proceed in the same manner as a township collector in collecting rates in a township and has the same powers and duties as a treasurer under the *Municipal Tax Sales Act, 1983* and the board by which the collector is employed has the same powers and duties as a council under that Act. Powers and duties of collectors

(7) Subsection 112 (2) of the said Act, as amended by the Statutes of Ontario, 1982, chapter 32, section 36, is further amended by inserting after "duties" in the tenth line "including the powers and duties with respect to the sale of land for tax arrears" and by striking out "67 (5) to (12)" in the twelfth line and inserting in lieu thereof "67 (5), (6) and (12)". s. 112 (2), amended

21.—(1) Notwithstanding section 18 or subsection 19 (1), but subject to subsection (2), where before the day this Act comes into force, a tax arrears certificate is registered under the *Municipal Affairs Act* or a certificate is given under section 433 of the *Municipal Act* in respect of any land, the tax arrears proceedings of the applicable Act shall continue to apply to such land. Transition; R.S.O. 1980, cc. 303, 302

Vesting

(2) Notwithstanding subsection (1), where land to which subsection (1) applies has not been the subject of a tax deed under the *Municipal Act* and has not been sold or declared necessary for municipal purposes under the *Municipal Affairs Act* by the 1st day of January, 1987, the land shall on that day vest in the municipality.

R.S.O. 1980, cc. 302, 303

Notice of vesting

(3) Where under subsection (2), land vests in a municipality, the treasurer shall forthwith register a notice of forfeiture in the prescribed form and every such notice vests the land in the municipality with an estate in fee simple in the land, together with all rights, privileges and appurtenances, free from all estates and interest subject only to,

(a) easements and restrictive covenants that run with the land; and

(b) any estates and interests of the Crown in right of Canada or in right of Ontario,

and every such notice of forfeiture shall be deemed to be a notice of vesting for the purposes of subsection 13 (4).

Compromise agreement

(4) Subsections (2) and (3) do not apply to land that, on the 1st day of January, 1987, is the subject of a subsisting compromise agreement entered into under the *Municipal Affairs Act*.

Application to certain school boards

R.S.O. 1980, c. 129

(5) This section applies with necessary modifications to proceedings taken under the *Education Act* by a board authorized under that Act to collect school rates or subscriptions.

Commencement

22. This Act comes into force on the 1st day of January, 1985.

Short title

23. The short title of this Act is the *Municipal Tax Sales Act, 1983*.

Gov. Publications

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

Bill 139

An Act to amend the Public Commercial Vehicles Act

The Hon. J. W. Snow
Minister of Transportation and Communications

1st Reading December 2nd, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTE

The purpose of the Bill is to provide the mechanism to allow holders of operating licences to have their certificates rewritten. The rewritten certificates would have no immediate effect but would be the basis for the issuance of new licences when further legislative enactment permits.

Bill 139 1983

An Act to amend the Public Commercial Vehicles Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Public Commercial Vehicles Act*, being chapter 407 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section: s. 10b, enacted

10b.—(1) Any holder of an operating licence that was issued pursuant to an application sent to the Board before the 21st day of June, 1983, may apply for a rewritten certificate by sending an application therefor to the Minister. Application for rewritten certificate

(2) The Minister shall refer all applications for rewritten certificates to the Board. Referral to Board

(3) The Board, on receipt of an application for a rewritten certificate, shall hold a hearing in respect of the application. Board to hold hearing

(4) Every operating licence referred to in subsection (1) constitutes indisputable evidence that the holder of the licence has satisfied the requirement of public necessity and convenience. Licence is evidence of necessity

(5) Only the applicant and the Minister are parties to a hearing under subsection (3). Parties

(6) After a hearing under subsection (3), the Board may propose to issue a rewritten certificate, Proposal to issue rewritten certificate

(a) revising a previous certificate; or

(b) consolidating several certificates,

issued in respect of the applicant, incorporating such amendments as the Board considers appropriate.

Limitations re rewritten certificates

(7) No rewritten certificate shall set out operating rights that,

(a) in any way are less than the applicant has; or

(b) are significantly greater than the applicant has except to the extent necessary to conform with the regulations in force at the time the certificate is rewritten.

R.S.O. 1980, c. 338, s. 22, does not apply

(8) Section 22 of the *Ontario Highway Transport Board Act* does not apply to a decision under subsection (3) or (16).

Notice of proposal

(9) If the Board proposes to issue a rewritten certificate, it shall cause notice of its proposal to be published in *The Ontario Gazette*.

Objection

(10) Any person other than the applicant objecting to the issuing of a rewritten certificate may file with the Board an objection within thirty days after publication of notice thereof in *The Ontario Gazette*.

Service

(11) Every objector shall serve a copy of the objection on the appropriate applicant on or before the day the objection is filed.

Information contained in objections

(12) Every objection filed under subsection (10),

(a) must be signed by the objector or by his solicitor on his behalf;

(b) must contain a clear and concise statement of the grounds on which the proposed rewritten certificate is opposed;

(c) must contain the name and address of the objector and of his solicitor, if any; and

(d) must contain proof of service as required by subsection (10).

Where no objection

(13) If an objection has not been filed and served in accordance with subsections (10) and (11), the Board shall issue the rewritten certificate that it proposed.

Hearing set

(14) Where an objection is filed, the Board shall cause a notice of hearing to be published in *The Ontario Gazette* identifying the proposed rewritten certificate, stating the nature of the objection and fixing the time, date and place of a hearing of the matter.

(15) The only grounds for an objection under this section are that a proposed rewritten certificate does not comply with subsection (7). Grounds for objection

(16) After a hearing held as a result of an objection, the Board shall issue the rewritten certificate that it proposed or issue a rewritten certificate in an amended form. Result of hearing

(17) Every rewritten certificate issued under subsection (13) or (16) shall be sent to the Minister to be held by him. Certificates held by Minister

(18) Except under and in accordance with further enactment of the Legislature, Effect of rewritten certificate

(a) a rewritten certificate has no effect; and

(b) a licence shall not be issued in accordance with a rewritten certificate.

2. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

3. The short title of this Act is the *Public Commercial Vehicles Amendment Act, 1983*. Short title

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983



Bill 139

(Chapter 79
Statutes of Ontario, 1983)

An Act to amend the Public Commercial Vehicles Act

The Hon. J. W. Snow
Minister of Transportation and Communications

1st Reading	December 2nd, 1983
2nd Reading	December 13th, 1983
3rd Reading	December 15th, 1983
Royal Assent	December 16th, 1983

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

Bill 139 1983

An Act to amend the Public Commercial Vehicles Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Public Commercial Vehicles Act*, being chapter 407 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section: s. 10b, enacted

10b.—(1) Any holder of an operating licence that was issued pursuant to an application sent to the Board before the 21st day of June, 1983, may apply for a rewritten certificate by sending an application therefor to the Minister. Application for rewritten certificate

(2) The Minister shall refer all applications for rewritten certificates to the Board. Referral to Board

(3) The Board, on receipt of an application for a rewritten certificate, shall hold a hearing in respect of the application. Board to hold hearing

(4) Every operating licence referred to in subsection (1) constitutes indisputable evidence that the holder of the licence has satisfied the requirement of public necessity and convenience. Licence is evidence of necessity

(5) Only the applicant and the Minister are parties to a hearing under subsection (3). Parties

(6) After a hearing under subsection (3), the Board may propose to issue a rewritten certificate, Proposal to issue rewritten certificate

(a) revising a previous certificate; or

(b) consolidating several certificates,

issued in respect of the applicant, incorporating such amendments as the Board considers appropriate.

Limitations re rewritten certificates

(7) No rewritten certificate shall set out operating rights that,

(a) in any way are less than the applicant has; or

(b) are significantly greater than the applicant has except to the extent necessary to conform with the regulations in force at the time the certificate is rewritten.

R.S.O. 1980, c. 338, s. 22, does not apply

(8) Section 22 of the *Ontario Highway Transport Board Act* does not apply to a decision under subsection (3) or (16).

Notice of proposal

(9) If the Board proposes to issue a rewritten certificate, it shall cause notice of its proposal to be published in *The Ontario Gazette*.

Objection

(10) Any person other than the applicant objecting to the issuing of a rewritten certificate may file with the Board an objection within thirty days after publication of notice thereof in *The Ontario Gazette*.

Service

(11) Every objector shall serve a copy of the objection on the appropriate applicant on or before the day the objection is filed.

Information contained in objections

(12) Every objection filed under subsection (10),

(a) must be signed by the objector or by his solicitor on his behalf;

(b) must contain a clear and concise statement of the grounds on which the proposed rewritten certificate is opposed;

(c) must contain the name and address of the objector and of his solicitor, if any; and

(d) must contain proof of service as required by subsection (10).

Where no objection

(13) If an objection has not been filed and served in accordance with subsections (10) and (11), the Board shall issue the rewritten certificate that it proposed.

Hearing set

(14) Where an objection is filed, the Board shall cause a notice of hearing to be published in *The Ontario Gazette* identifying the proposed rewritten certificate, stating the nature of the objection and fixing the time, date and place of a hearing of the matter.

Grounds for objection

(15) The only grounds for an objection under this section are that a proposed rewritten certificate does not comply with subsection (7).

Result of hearing

(16) After a hearing held as a result of an objection, the Board shall issue the rewritten certificate that it proposed or issue a rewritten certificate in an amended form.

Certificates held by Minister

(17) Every rewritten certificate issued under subsection (13) or (16) shall be sent to the Minister to be held by him.

Effect of rewritten certificate

(18) Except under and in accordance with further enactment of the Legislature,

(a) a rewritten certificate has no effect; and.

(b) a licence shall not be issued in accordance with a rewritten certificate.

Commencement

2. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

3. The short title of this Act is the *Public Commercial Vehicles Amendment Act, 1983*.

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3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

Bill 140

An Act to amend certain Statutes relating to the Commission of Offences by Young Persons

The Hon. R. McMurtry
Attorney General

1st Reading December 2nd, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

At present a person under the age of sixteen who is alleged to have violated a provincial statute or municipal by-law is prosecuted under the *Juvenile Delinquents Act* (Canada). However, the new *Young Offenders Act* (Canada) will apply only to young persons alleged to have violated the *Criminal Code* and other federal statutes. It is proposed that the *Provincial Offences Act,* with certain modifications contained in a new Part V-A, apply to young persons alleged to have committed provincial offences. However, young persons will be tried by judges of the provincial court (family division) and of the Unified Family Court.

SECTION 1. *Provincial Offences Act* *Section 91a.* Self-explanatory.

Section 91b. The *Provincial Offences Act* does not apply to children under the age of twelve who commit offences.

Section 91c. The summary offence notice or "ticket" procedure under Part I does not apply to young persons.

Section 91d. A young person's parent or another responsible adult is to be notified of the charge against the young person.

Section 91e. The sentencing options available in a young person's case, in proceedings commenced by certificate, are:

1. A fine not exceeding $300.
2. A probation order.
3. An absolute discharge.

Section 91f. A young person must be present at his trial, unless the court permits otherwise or excludes him from the courtroom, and may not be convicted in his absence. If he fails to appear (or, where he is not excused or excluded, to attend personally) a warrant for his arrest may be issued, but he is not subject to a penalty for failure to appear as an adult would be.

Section 91g. Information which might identify a young person in connection with an offence or alleged offence may not be published. The penalty is the same as the penalty prescribed for similar contraventions of the *Child Welfare Act.*

Section 91h. The pre-sentence report is available in a young person's case whether the proceeding was commenced by information or by certificate of offence. It is mandatory where imprisonment for breach of probation is being considered.

Sections 91i and 91k. A young person may not be imprisoned, except for breach of probation, and then only in a place of open custody designated under the *Young Offenders Act* (Canada).

The sentencing options available in a young person's case, in proceedings commenced by information, include:

1. A fine not exceeding $1,000.
2. A probation order.
3. An absolute discharge.

Section 91j. A young person may not be imprisoned for failure to pay a fine, but may instead be subjected to a probation order.

Section 91l. A parent's testimony and other evidence the court considers credible or trustworthy are admissible evidence of a young person's age.

Section 91m. A young person's appeal is made to the county or district court, whether the proceeding was commenced by information or by certificate.

Section 91n. Young persons may be arrested without warrant only where this is necessary to establish identity or prevent the continuation or repetition of an offence that seriously endangers the young person or the person or property of another.

Section 91o. A young person who has been arrested shall be released unless his continued detention is necessary for the same reasons that would justify an arrest without warrant. If he is held until he can be brought before a justice for a bail hearing, a parent is to be notified.

A young person who is detained in custody shall wherever possible be detained in a place of temporary detention designated under the *Young Offenders Act* (Canada). He may be detained in a place where adults are also detained only if a justice authorizes this.

Section 91p. A young person's trial and sentencing are to be conducted by a judge.

Section 91q. Part V-A will apply to offences committed after it comes into force, and also to earlier offences that could have been, but were not, made the subject of proceedings under the *Juvenile Delinquents Act* (Canada). The new *Young Offenders Act* (Canada) provides that this category of offences shall be dealt with under provincial law.

SECTIONS 2 and 3 . *Provincial Courts Act* and *Unified Family Court Act*

The Provincial Court (Family Division) and the Unified Family Court are given jurisdiction over young persons charged with provincial offences.

Bill 140 1983

An Act to amend certain Statutes relating to the Commission of Offences by Young Persons

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PROVINCIAL OFFENCES ACT

1. The *Provincial Offences Act*, being chapter 400 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following Part: Part V-A, (ss. 91a-91q), enacted

PART V-A

YOUNG PERSONS

91a. In this Part, Interpretation

(a) "parent", when used with reference to a young person, includes an adult with whom the young person ordinarily resides;

(b) "young person" means a person who is or, in the absence of evidence to the contrary, appears to be,

(i) twelve years of age or more, but

(ii) under sixteen years of age,

and includes a person sixteen years of age or more charged with having committed an offence while he was twelve years of age or more but under sixteen years of age.

91b. No person shall be convicted of an offence committed while he was under twelve years of age. Minimum age

Offence notice not to be used

91c. A proceeding commenced against a young person by certificate of offence shall not be initiated by an offence notice under clause 3 (2) (a).

Notice to parent

91d.—(1) Where a summons is served upon a young person or a young person is released on a recognizance under this Act, the provincial offences officer, in the case of a summons, or the officer in charge, in the case of a recognizance, shall as soon as practicable give notice to a parent of the young person by delivering a copy of the summons or recognizance to the parent.

Where no notice given

(2) Where notice has not been given under subsection (1) and no person to whom notice could have been given appears with the young person, the court may,

(a) adjourn the hearing to another time to permit notice to be given; or

(b) dispense with notice.

Saving

(3) Failure to give notice to a parent under subsection (1) does not in itself invalidate the proceedings against the young person.

Sentence where proceedings commenced by certificate

91e.—(1) Notwithstanding subsection 12 (1), where a young person is found guilty of an offence in proceedings commenced by certificate, the court may,

(a) convict the young person and,

(i) order the young person to pay a fine not exceeding the set fine that would be payable for the offence by an adult, the maximum fine prescribed for the offence, or $300, whichever is the least, or

(ii) suspend the passing of sentence and direct that the young person comply with the conditions prescribed in a probation order; or

(b) discharge the young person absolutely.

Term of probation order

(2) Section 72 applies with necessary modifications to a probation order made under subclause (1) (a) (ii), in the same manner as if the proceedings were commenced by information, except that the probation order shall not remain in force for more than ninety days from the date when it takes effect.

(3) Subsection 12 (2) applies with necessary modifications where a young person is convicted of an offence in proceedings initiated by summons, in the same manner as if the proceedings were initiated by offence notice. s. 12 (2) applies where proceedings initiated by summons

91f.—(1) Subject to subsection 53 (1) and subsection (2), a young person shall be present in court during the whole of his trial. Young person to be present at trial

(2) The court may permit a young person to be absent during the whole or any part of his trial, on such conditions as the court considers proper. Court may permit absence

(3) Sections 43 and 55 do not apply to a young person who is a defendant. Application of ss. 43, 55

(4) Where a young person who is a defendant does not appear at the time and place appointed for a hearing and it is proved by the prosecutor, having been given a reasonable opportunity to do so, that a summons was served, an undertaking to appear was given or a recognizance to appear was entered into, as the case may be, or where the young person does not appear upon the resumption of a hearing that has been adjourned, the court may adjourn the hearing and issue a summons to appear or issue a warrant in the prescribed form for the arrest of the young person. Failure of young person to appear

(5) Where a young person does not attend personally in response to a summons issued under section 52 and it is proved by the prosecutor, having been given a reasonable opportunity to do so, that the summons was served, the court may adjourn the hearing and issue a further summons or issue a warrant in the prescribed form for the arrest of the young person. Compelling young person's attendance

91g.—(1) No person shall publish by any means a report, Identity of young person not to be published

(a) of an offence committed or alleged to have been committed by a young person; or

(b) of a hearing, adjudication, sentence or appeal concerning a young person who committed or is alleged to have committed an offence,

in which the name of or any information serving to identify the young person is disclosed.

(2) Every person who contravenes subsection (1) and every director, officer or employee of a corporation who authorizes, permits or acquiesces in a contravention of subsection (1) by Offence

the corporation is guilty of an offence and is liable on conviction to a fine of not more than $10,000.

Pre-sentence report

91h.—(1) Section 57 applies with necessary modifications where a young person is convicted of an offence in a proceeding commenced by certificate of offence, in the same manner as if the proceeding were commenced by information.

Pre-sentence report mandatory where imprisonment considered

(2) Where a young person who is bound by a probation order is convicted of an offence under section 75 and the court is considering imposing a sentence of imprisonment, the court shall direct a probation officer to prepare and file with the court a report in writing relating to the defendant for the purpose of assisting the court in imposing sentence, and the clerk of the court shall cause a copy of the report to be provided to the defendant or his counsel or agent and to the prosecutor.

Penalties limited

91i.—(1) Notwithstanding the provisions of this or any other Act, no young person shall be sentenced,

(a) to be imprisoned, except under clause 75 (d); or

(b) to pay a fine exceeding $1,000.

Sentence where proceedings commenced by information

(2) Where a young person is found guilty of an offence in proceedings commenced by information, the court may,

(a) convict the young person and,

(i) order the young person to pay a fine not exceeding the maximum prescribed for the offence or $1,000, whichever is less, or

(ii) suspend the passing of sentence and direct that the young person comply with the conditions prescribed in a probation order; or

(b) discharge the young person absolutely.

Term of probation order

(3) A probation order made under subclause (2) (a) (ii) shall not remain in force for more than one year from the date when it takes effect.

No imprisonment for non-payment of fine

91j.—(1) No warrant of committal shall be issued against a young person under section 70.

Probation order in lieu of imprisonment

(2) Where it would be appropriate, but for subsection (1), to issue a warrant against a young person under subsection 70 (3) or (4), a judge may direct that the young person comply with

the conditions prescribed in a probation order, where the young person has been given fifteen days notice of the intent to make a probation order and has had an opportunity to be heard.

Term of probation order

(3) A probation order made under subsection (2) shall not remain in force for more than ninety days from the date when it takes effect.

Open custody

91k. Where a young person is sentenced to a term of imprisonment for breach of probation under clause 75 (d), the term of imprisonment shall be served in a place of open custody designated under section 24 of the *Young Offenders Act* (Canada).

29-30-31 Eliz. II, c. 110

Evidence of young person's age

91l. In a proceeding under this Act, a parent's testimony as to a young person's age and any other evidence of a young person's age that the court considers credible or trustworthy in the circumstances are admissible.

Appeal

91m. Where the defendant is a young person, an appeal under subsection 118 (1) shall be to the county or district court of the county or district in which the adjudication was made, but the procedures and the powers of the court and any appeal from the judgment of the court shall be the same as if the appeal were to the provincial court (criminal division).

Arrest without warrant limited

91n. No person shall exercise an authority under this or any other Act to arrest a young person without warrant unless the person has reasonable and probable grounds to believe that it is necessary in the public interest to do so in order to,

(a) establish the young person's identity; or

(b) prevent the continuation or repetition of an offence that constitutes a serious danger to the young person or to the person or property of another.

s. 133 does not apply

91o.—(1) Section 133 does not apply to a young person who has been arrested.

Release after arrest by officer

(2) Where a police officer acting under a warrant or other power of arrest arrests a young person, the police officer shall, as soon as is practicable, release the young person from custody unconditionally or after serving him with a summons unless he has reasonable and probable grounds to believe that it is necessary in the public interest for the young person to be detained in order to,

(a) establish the young person's identity; or

(b) prevent the continuation or repetition of an offence that constitutes a serious danger to the young person or the person or property of another.

Release by officer in charge

(3) Where a young person is not released from custody under subsection (2), the police officer shall deliver him to the officer in charge who shall, where in his opinion the conditions set out in clause (2) (a) or (b) do not or no longer exist, release the young person,

(a) unconditionally;

(b) upon serving him with a summons; or

(c) upon his entering into a recognizance in the prescribed form without sureties conditioned for his appearance in court.

Notice to parent

(4) Where the officer in charge does not release the young person under subsection (3), the officer in charge shall as soon as possible notify a parent of the young person by advising the parent, orally or in writing, of the young person's arrest, the reason for the arrest and the place of detention.

ss. 134, 135 apply

(5) Sections 134 and 135 apply with necessary modifications to the release of a young person from custody under this section.

Place of custody

(6) No young person who is detained under section 134 shall be detained in any part of a place in which an adult who has been charged with or convicted of an offence is detained unless a justice so authorizes, on being satisfied that,

(a) the young person cannot, having regard to the young person's own safety or the safety of others, be detained in a place of temporary detention for young persons; or

(b) no place of temporary detention for young persons is available within a reasonable distance.

Idem

29-30-31 Eliz. II, c. 110

(7) Wherever practicable, a young person who is detained in custody shall be detained in a place of temporary detention designated under subsection 7 (1) of the *Young Offenders Act* (Canada).

Functions of justice of peace limited

91p. The functions of a justice with respect to a defendant who is a young person shall be performed only by a judge, except under Parts III and VII.

91q. This Part applies to proceedings commenced after this Part comes into force. Application

PROVINCIAL COURTS ACT

2.—(1) Section 10 of the *Provincial Courts Act*, being chapter 398 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsections: s. 10, amended

(2a) The Chief Judge of the Provincial Courts (Family Division) is the chief judge of the provincial courts (family division) sitting as provincial offences courts. Where family court sits as provincial offences court

(2b) Subsection (2) and subsection 19 (1) do not apply to the Unified Family Court sitting as a provincial offences court. Where Unified Family Court sits as provincial offences court

(2) Section 18 of the said Act is amended by adding thereto the following subsection: s. 18, amended

(3) Notwithstanding subsection (2), a proceeding in a provincial offences court against a young person shall be conducted in the provincial court (family division) in the same county or district, or, in the Judicial District of Hamilton-Wentworth, in the Unified Family Court, sitting as a provincial offences court. Exception: young persons

(3) Clause 23 (2) (b) of the said Act is repealed and the following substituted therefor: s. 23 (2) (b), re-enacted

(b) shall be deemed to be and shall sit as a provincial offences court for the purpose of dealing with young persons as defined in the *Provincial Offences Act*. R.S.O. 1980, c. 400

(4) Section 33 of the said Act is amended by adding thereto the following subsections: s. 33, amended

(2a) The clerk of a provincial court (family division) is the clerk of that court sitting as a provincial offences court. Where family court sits as provincial offences court

(2b) The clerk of the Unified Family Court is the clerk of that court sitting as a provincial offences court. Where Unified Family Court sits as provincial offences court

UNIFIED FAMILY COURT ACT

s. 16 (b), re-enacted

3. Clause 16 (b) of the *Unified Family Court Act*, being chapter 515 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(b) shall be deemed to be and shall sit as a provincial offences court for the purpose of dealing with young persons as defined in the *Provincial Offences Act*.

R.S.O. 1980, c. 400

Commencement

4. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

5. The short title of this Act is the *Provincial Offences Statute Law Amendment Act, 1983*.

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

Bill 140

(Chapter 80
Statutes of Ontario, 1983)

An Act to amend certain Statutes relating to the Commission of Offences by Young Persons

The Hon. R. McMurtry
Attorney General

1st Reading	December 2nd, 1983
2nd Reading	December 15th, 1983
3rd Reading	December 15th, 1983
Royal Assent	December 16th, 1983

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

Bill 140 1983

An Act to amend certain Statutes relating to the Commission of Offences by Young Persons

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PROVINCIAL OFFENCES ACT

1. The *Provincial Offences Act*, being chapter 400 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following Part: Part V-A, (ss. 91a-91q), enacted

PART V-A

YOUNG PERSONS

91a. In this Part, Interpretation

(a) "parent", when used with reference to a young person, includes an adult with whom the young person ordinarily resides;

(b) "young person" means a person who is or, in the absence of evidence to the contrary, appears to be,

(i) twelve years of age or more, but

(ii) under sixteen years of age,

and includes a person sixteen years of age or more charged with having committed an offence while he was twelve years of age or more but under sixteen years of age.

91b. No person shall be convicted of an offence committed while he was under twelve years of age. Minimum age

Offence notice not to be used

91c. A proceeding commenced against a young person by certificate of offence shall not be initiated by an offence notice under clause 3 (2) (a).

Notice to parent

91d.—(1) Where a summons is served upon a young person or a young person is released on a recognizance under this Act, the provincial offences officer, in the case of a summons, or the officer in charge, in the case of a recognizance, shall as soon as practicable give notice to a parent of the young person by delivering a copy of the summons or recognizance to the parent.

Where no notice given

(2) Where notice has not been given under subsection (1) and no person to whom notice could have been given appears with the young person, the court may,

(a) adjourn the hearing to another time to permit notice to be given; or

(b) dispense with notice.

Saving

(3) Failure to give notice to a parent under subsection (1) does not in itself invalidate the proceedings against the young person.

Sentence where proceedings commenced by certificate

91e.—(1) Notwithstanding subsection 12 (1), where a young person is found guilty of an offence in proceedings commenced by certificate, the court may,

(a) convict the young person and,

(i) order the young person to pay a fine not exceeding the set fine that would be payable for the offence by an adult, the maximum fine prescribed for the offence, or $300, whichever is the least, or

(ii) suspend the passing of sentence and direct that the young person comply with the conditions prescribed in a probation order; or

(b) discharge the young person absolutely.

Term of probation order

(2) Section 72 applies with necessary modifications to a probation order made under subclause (1) (a) (ii), in the same manner as if the proceedings were commenced by information, except that the probation order shall not remain in force for more than ninety days from the date when it takes effect.

(3) Subsection 12 (2) applies with necessary modifications where a young person is convicted of an offence in proceedings initiated by summons, in the same manner as if the proceedings were initiated by offence notice. s. 12 (2) applies where proceedings initiated by summons

91f.—(1) Subject to subsection 53 (1) and subsection (2), a young person shall be present in court during the whole of his trial. Young person to be present at trial

(2) The court may permit a young person to be absent during the whole or any part of his trial, on such conditions as the court considers proper. Court may permit absence

(3) Sections 43 and 55 do not apply to a young person who is a defendant. Application of ss. 43, 55

(4) Where a young person who is a defendant does not appear at the time and place appointed for a hearing and it is proved by the prosecutor, having been given a reasonable opportunity to do so, that a summons was served, an undertaking to appear was given or a recognizance to appear was entered into, as the case may be, or where the young person does not appear upon the resumption of a hearing that has been adjourned, the court may adjourn the hearing and issue a summons to appear or issue a warrant in the prescribed form for the arrest of the young person. Failure of young person to appear

(5) Where a young person does not attend personally in response to a summons issued under section 52 and it is proved by the prosecutor, having been given a reasonable opportunity to do so, that the summons was served, the court may adjourn the hearing and issue a further summons or issue a warrant in the prescribed form for the arrest of the young person. Compelling young person's attendance

91g.—(1) No person shall publish by any means a report, Identity of young person not to be published

(a) of an offence committed or alleged to have been committed by a young person; or

(b) of a hearing, adjudication, sentence or appeal concerning a young person who committed or is alleged to have committed an offence,

in which the name of or any information serving to identify the young person is disclosed.

(2) Every person who contravenes subsection (1) and every director, officer or employee of a corporation who authorizes, permits or acquiesces in a contravention of subsection (1) by Offence

the corporation is guilty of an offence and is liable on conviction to a fine of not more than $10,000.

Pre-sentence report

91h.—(1) Section 57 applies with necessary modifications where a young person is convicted of an offence in a proceeding commenced by certificate of offence, in the same manner as if the proceeding were commenced by information.

Pre-sentence report mandatory where imprisonment considered

(2) Where a young person who is bound by a probation order is convicted of an offence under section 75 and the court is considering imposing a sentence of imprisonment, the court shall direct a probation officer to prepare and file with the court a report in writing relating to the defendant for the purpose of assisting the court in imposing sentence, and the clerk of the court shall cause a copy of the report to be provided to the defendant or his counsel or agent and to the prosecutor.

Penalties limited

91i.—(1) Notwithstanding the provisions of this or any other Act, no young person shall be sentenced,

(a) to be imprisoned, except under clause 75 (d); or

(b) to pay a fine exceeding $1,000.

Sentence where proceedings commenced by information

(2) Where a young person is found guilty of an offence in proceedings commenced by information, the court may,

(a) convict the young person and,

(i) order the young person to pay a fine not exceeding the maximum prescribed for the offence or $1,000, whichever is less, or

(ii) suspend the passing of sentence and direct that the young person comply with the conditions prescribed in a probation order; or

(b) discharge the young person absolutely.

Term of probation order

(3) A probation order made under subclause (2) (a) (ii) shall not remain in force for more than one year from the date when it takes effect.

No imprisonment for non-payment of fine

91j.—(1) No warrant of committal shall be issued against a young person under section 70.

Probation order in lieu of imprisonment

(2) Where it would be appropriate, but for subsection (1), to issue a warrant against a young person under subsection 70 (3) or (4), a judge may direct that the young person comply with

the conditions prescribed in a probation order, where the young person has been given fifteen days notice of the intent to make a probation order and has had an opportunity to be heard.

Term of probation order

(3) A probation order made under subsection (2) shall not remain in force for more than ninety days from the date when it takes effect.

Open custody

91k. Where a young person is sentenced to a term of imprisonment for breach of probation under clause 75 (d), the term of imprisonment shall be served in a place of open custody designated under section 24 of the *Young Offenders Act* (Canada).

29-30-31, Eliz. II, c. 110

Evidence of young person's age

91l. In a proceeding under this Act, a parent's testimony as to a young person's age and any other evidence of a young person's age that the court considers credible or trustworthy in the circumstances are admissible.

Appeal

91m. Where the defendant is a young person, an appeal under subsection 118 (1) shall be to the county or district court of the county or district in which the adjudication was made, but the procedures and the powers of the court and any appeal from the judgment of the court shall be the same as if the appeal were to the provincial court (criminal division).

Arrest without warrant limited

91n. No person shall exercise an authority under this or any other Act to arrest a young person without warrant unless the person has reasonable and probable grounds to believe that it is necessary in the public interest to do so in order to,

(a) establish the young person's identity; or

(b) prevent the continuation or repetition of an offence that constitutes a serious danger to the young person or to the person or property of another.

s. 133 does not apply

91o.—(1) Section 133 does not apply to a young person who has been arrested.

Release after arrest by officer

(2) Where a police officer acting under a warrant or other power of arrest arrests a young person, the police officer shall, as soon as is practicable, release the young person from custody unconditionally or after serving him with a summons unless he has reasonable and probable grounds to believe that it is necessary in the public interest for the young person to be detained in order to,

(a) establish the young person's identity; or

(b) prevent the continuation or repetition of an offence that constitutes a serious danger to the young person or the person or property of another.

Release by officer in charge

(3) Where a young person is not released from custody under subsection (2), the police officer shall deliver him to the officer in charge who shall, where in his opinion the conditions set out in clause (2) (a) or (b) do not or no longer exist, release the young person,

(a) unconditionally;

(b) upon serving him with a summons; or

(c) upon his entering into a recognizance in the prescribed form without sureties conditioned for his appearance in court.

Notice to parent

(4) Where the officer in charge does not release the young person under subsection (3), the officer in charge shall as soon as possible notify a parent of the young person by advising the parent, orally or in writing, of the young person's arrest, the reason for the arrest and the place of detention.

ss. 134, 135 apply

(5) Sections 134 and 135 apply with necessary modifications to the release of a young person from custody under this section.

Place of custody

(6) No young person who is detained under section 134 shall be detained in any part of a place in which an adult who has been charged with or convicted of an offence is detained unless a justice so authorizes, on being satisfied that,

(a) the young person cannot, having regard to the young person's own safety or the safety of others, be detained in a place of temporary detention for young persons; or

(b) no place of temporary detention for young persons is available within a reasonable distance.

Idem

(7) Wherever practicable, a young person who is detained in custody shall be detained in a place of temporary detention designated under subsection 7 (1) of the *Young Offenders Act* (Canada).

29-30-31, Eliz. II, c. 110

Functions of justice of peace limited

91p. The functions of a justice with respect to a defendant who is a young person shall be performed only by a judge, except under Parts III and VII.

91q. This Part applies to proceedings commenced after this Part comes into force. Application

PROVINCIAL COURTS ACT

2.—(1) Section 10 of the *Provincial Courts Act*, being chapter 398 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsections: s. 10, amended

(2a) The Chief Judge of the Provincial Courts (Family Division) is the chief judge of the provincial courts (family division) sitting as provincial offences courts. Where family court sits as provincial offences court

(2b) Subsection (2) and subsection 19 (1) do not apply to the Unified Family Court sitting as a provincial offences court. Where Unified Family Court sits as provincial offences court

(2) Section 18 of the said Act is amended by adding thereto the following subsection: s. 18, amended

(3) Notwithstanding subsection (2), a proceeding in a provincial offences court against a young person shall be conducted in the provincial court (family division) in the same county or district, or, in the Judicial District of Hamilton-Wentworth, in the Unified Family Court, sitting as a provincial offences court. Exception: young persons

(3) Clause 23 (2) (b) of the said Act is repealed and the following substituted therefor: s. 23 (2) (b), re-enacted

(b) shall be deemed to be and shall sit as a provincial offences court for the purpose of dealing with young persons as defined in the *Provincial Offences Act*. R.S.O. 1980, c. 400

(4) Section 33 of the said Act is amended by adding thereto the following subsections: s. 33, amended

(2a) The clerk of a provincial court (family division) is the clerk of that court sitting as a provincial offences court. Where family court sits as provincial offences court

(2b) The clerk of the Unified Family Court is the clerk of that court sitting as a provincial offences court. Where Unified Family Court sits as provincial offences court

UNIFIED FAMILY COURT ACT

s. 16 (b), re-enacted

3. Clause 16 (b) of the *Unified Family Court Act*, being chapter 515 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(b) shall be deemed to be and shall sit as a provincial offences court for the purpose of dealing with young persons as defined in the *Provincial Offences Act*.

R.S.O. 1980, c. 400

Commencement

4. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

5. The short title of this Act is the *Provincial Offences Statute Law Amendment Act, 1983*.

Bill 141 **Government Bill**

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

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Bill 141

An Act to amend the Employment Standards Act

The Hon. R. H. Ramsay
Minister of Labour

1st Reading December 5th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTES

SECTION 1. Under the re-enactment of Part IX of the Act, the application of the principle of equal pay for work of equal value is extended, under clause 33 (1) (b), to work in the same establishment that requires substantially equivalent or greater skill, effort and responsibility under substantially similar working conditions when the skill, effort, responsibility and working conditions are considered as a whole and not individually.

The application of the Part is further extended so as to prohibit the replacement of an employee of one sex with an employee of the other sex at wages lower than the wages paid to the replaced employee.

Employers will also be prohibited from restricting access to work or excluding from work employees of the same sex to avoid the application of section 33.

The present clauses 33 (1) (a) to (d) and subsections (2), (3) and (4) are retained in a revised form.

SECTION 2. The amendment is complementary to the enactment of section 37b of the Act as set out in section 5 of the Bill.

SECTION 3. The re-enactment of section 35 provides that no pregnant employee may be discharged or terminated or laid off from employment or penalized because of pregnancy. At present this protection is available only to employees who have worked for the employer for more than twelve months and eleven weeks.

The re-enactment also extends the application of the pregnancy leave provisions to medical conditions related to pregnancy.

SECTION 4.—Subsection 1. At present, an employee must work for twelve months and eleven weeks with an employer before the employee is entitled to the seventeen weeks of pregnancy leave provided for in subsection 36 (2). The proposed amendment reduces the required service period to twelve months.

Subsection 2. At present, an employee may return to work before the expiry of a pregnancy leave only with the consent of the employer. The re-enactment of subsection 36 (4) will enable an employee to return before the expiry of a pregnancy leave upon giving four weeks notice to the employer.

SECTION 5. The proposed section 37a provides that an employee with less than twelve months service with an employer is not required to return to work during the six weeks following the date of the birth of her child.

The proposed section 37b will permit an employee who adopts a child to take up to seventeen weeks of leave following the placement of a child with the employee for the purpose of adoption. Adoption leave will be available to either the adoptive father or adoptive mother.

SECTION 6. At present, an employer must reinstate an employee on her return from pregnancy leave without loss of seniority or benefits accrued to the commencement of the leave of absence. It is proposed that section 38 be amended to provide that all service related credits and benefits will continue to accrue during a pregnancy or adoption leave as if the employee had been at work on each day of the leave that the employer's operations were not suspended or discontinued.

Bill 141 1983

An Act to amend the Employment Standards Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Part IX of the *Employment Standards Act*, being chapter 137 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor: Part IX, (s. 33), re-enacted

PART IX

EQUAL PAY

33.—(1) No employer or person acting on behalf of an employer shall differentiate between his male and female employees by paying a female employee wages that are less than the wages paid to a male employee, or *vice versa*, for substantially the same kind of work performed in the same establishment where the work requires, Equal pay

(a) substantially the same skill, effort and responsibility and the work is performed under similar working conditions; or

(b) substantially equivalent or greater skill, effort and responsibility under similar working conditions when the skill, effort, responsibility and the working conditions are considered as a whole and not individually.

(2) No employer or person acting on behalf of an employer shall, Additional prohibitions

(a) in replacing a male employee with a female employee, or *vice versa*, pay to the replacing employee wages that are less than the wages paid to the replaced employee;

(b) restrict access to the work to employees of a particular sex in order to avoid the application of this section;

(c) exclude from the work employees of a particular sex in order to avoid the application of this section; or

(d) reduce the wages of an employee in order to comply with this section.

Seniority, merit pay, etc.

(3) Subsection (1) and clause (2) (a) do not apply where a differentiation in wages is made pursuant to a system established or adopted by an employer that is based on,

(a) seniority;

(b) merit;

(c) measurement of earnings by quantity or quality of production; or

(d) a reasonable and *bona fide* factor other than sex.

Employer not to be requested to contravene section

(4) No organization of employers or employees or its agents shall cause or attempt to cause an employer to agree to or to pay to the employer's employees wages that are in contravention of this section.

Determination by employment standards officer

(5) Where an employment standards officer finds that an employer or person acting on behalf of an employer has failed to comply with subsection (1) or (2), the employment standards officer may determine the amount of money owing to an employee because of such non-compliance, and such amount shall be deemed to be unpaid wages.

Heading, re-enacted

2. Part XI of the said Act is amended by striking out the heading "PREGNANCY LEAVE" and inserting in lieu thereof "PREGNANCY AND ADOPTION LEAVE".

s. 35, re-enacted

3. Section 35 of the said Act is repealed and the following substituted therefor:

Interpretation

35.—(1) For the purposes of this Part, "pregnancy" includes a medical condition related to pregnancy that renders an employee unable to perform the duties of her position or that materially affects the performance of her work.

No penalty for pregnancy

(2) No employer shall terminate or lay-off an employee or impose any penalty upon an employee because of pregnancy.

Leaves of absence may be required

(3) Notwithstanding subsection (2), an employer may require an employee who is pregnant to take a leave or leaves of absence at such time or times as she is unable to perform the

duties of her position or the performance of her work is materially affected by the pregnancy.

4.—(1) Subsection 36 (1) of the said Act is amended by striking out "and eleven weeks" in the third line. s. 36 (1), amended

(2) Subsection 36 (4) of the said Act is repealed and the following substituted therefor: s. 36 (4), re-enacted

(4) Subject to subsection (5), an employee may with the consent of her employer or upon giving her employer four weeks' notice, shorten the duration of the leave of absence requested under subsection (1). Leave may be shortened

5. The said Act is amended by adding thereto the following sections: ss. 37a, 37b, enacted

37a. An employee who is pregnant and is not entitled to a leave of absence under section 36 shall not be required to return to work before the expiration of six weeks following the actual day of her delivery and for the purposes of this Part the time away from work shall be deemed to be a leave of absence under this Part. Employees with less than twelve months service

37b.—(1) An employer shall grant to an employee a leave of absence of at least seventeen weeks or such shorter period as the employee may in writing request from the time a child is placed with the employee for the purpose of adoption by an adoption agency or a person licensed under section 60 of the *Child Welfare Act*. Adoption leave

R.S.O. 1980, c. 66

(2) Every employee who has been employed by the employer for a period of twelve months immediately preceding the day of placement and who makes application therefor within such time as is reasonable in the circumstances shall be entitled to a leave of absence as provided by subsection (1). Entitlement to leave

(3) An employee may with the consent of the employer or upon giving the employer four weeks' notice shorten the duration of the leave of absence requested under subsection (1). Leave may be shortened

(4) An employee shall, upon the request of the employer, provide the employer with a letter from the adoption agency or licensed person verifying the proposed adoption. Furnishing of verification

(5) No employer shall terminate or lay-off an employee or impose any penalty upon an employee because the employee has taken or intends to take a leave of absence under this section. No penalty for leave

One adoptive parent entitled to leave

(6) This section applies to entitle only one of two adoptive parents who are employees to a leave of absence in respect of the placement for adoption of the same child and the adoptive parents shall determine as between themselves who is entitled to the leave.

s. 38, re-enacted

6. Section 38 of the said Act is repealed and the following substituted therefor:

Reinstatement

38.—(1) Upon the expiry of any leave of absence under this Part, the employer shall, upon the employee's return to work, reinstate the employee to the employee's regular position or provide the employee with alternative work of a comparable nature at not less than the wages being paid for such position.

Idem

(2) Where the employer has suspended or discontinued operations during any leave of absence under this Part and has not resumed operations at the expiry of the leave of absence, the employer shall, upon resumption of operations, reinstate the employee to the employee's regular position or to alternate work in accordance with an established seniority system or practice of the employer, and in the absence of such a system or practice shall reinstate the employee in accordance with subsection (1).

Continuation of credits and benefits

(3) While an employee is on leave under this Part, the employee's service related credits and benefits shall continue to accrue during the leave for all purposes, including the determination of all entitlements under this Act based on length of service, as if the employee had been at work on each regular work day of the employee that the employer's operations were not suspended or discontinued.

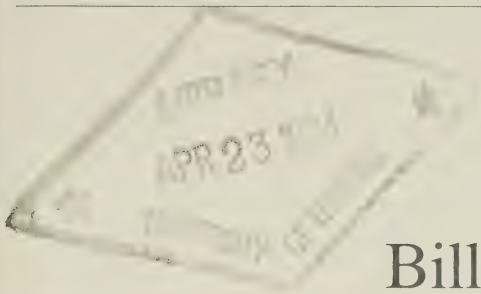
Commencement

7. This Act comes into force on the day it receives Royal Assent.

Short title

8. The short title of this Act is the *Employment Standards Amendment Act, 1983*.

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983



Bill 142

An Act respecting the City of Barrie and the Township of Vespra

The Hon. C. Bennett
Minister of Municipal Affairs and Housing

1st Reading December 6th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTES

The Bill provides for the annexation by the City of Barrie of certain lands situate in the Township of Vespra.

Among the principal features of the Bill are the following:

1. Certain described lands in the Township are annexed to the City on January 1st, 1984. (s. 2).
2. The assets and liabilities of the Township attributable to the annexed area become assets and liabilities of the City without compensation; provision is made for a committee of arbitrators to determine which of the assets and liabilities of the Township are attributable to the annexed area. (s. 3).
3. Unpaid taxes on the annexed lands may be collected by the City as though they had been imposed by it. (s. 4).
4. Provision is made for the application of City by-laws to the annexed lands and to deem the provisions of the Township's official plan pertaining to the annexed lands to be provisions of the City's official plan. (s. 5).
5. The Minister of Municipal Affairs and Housing is empowered to order, over a transitional period, that different rates of taxation be imposed on the lands annexed to the City and on the remainder of the City, than would otherwise be imposed. (s. 6).
6. Provision is made for the payment by the City to the Township of compensating grants for the loss of assessment caused by the annexation. (s. 7).
7. The Minister is empowered to grant financial assistance in the manner specified to the two municipalities. (s. 8).
8. The head of the Township council is *ex officio* a member of the City council. (s. 9).
9. For the purposes of the next regular election to be held in 1985, the Minister is empowered to redivide the City into wards, taking into account the annexed lands, and may provide for the composition of the council of the City. (s. 10).

Bill 142 1983

An Act respecting the City of Barrie and the Township of Vespra

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act, Interpretation

(a) "annexed area" means the land annexed to the City of Barrie under section 2;

(b) "City" means The Corporation of the City of Barrie;

(c) "Minister" means the Minister of Municipal Affairs and Housing;

(d) "Township" means The Corporation of the Township of Vespra.

2. On the 1st day of January, 1984, the portion of the Township of Vespra described in the Schedule is annexed to the City of Barrie. Annexation of part of Vespra to Barrie

3.—(1) All the assets and liabilities of the Township attributable on the 1st day of January, 1984 to the annexed area become assets and liabilities of the City without compensation. Assets and liabilities

(2) The Minister may appoint a committee of arbitrators for the purpose of determining the assets and liabilities, including reserve funds, of the Township attributable to the annexed area. Committee of arbitrators

(3) The committee shall consist of the treasurer of the City, the treasurer of the Township and such other person or persons as the Minister may appoint. Composition

(4) The committee shall make a determination of the assets and liabilities, including reserve funds attributable to the Determination of assets and liabilities

annexed area, together with the determination of any financial adjustments that may be necessary.

Notification of determination

(5) The committee shall notify the clerk of the City, the clerk of the Township and the Ontario Municipal Board of the determination made under subsection (4), and, unless the council of either municipality informs the Board in writing within thirty days of the notification that it objects to such determination, the determination shall be given effect to by order of the Board.

Determination of O.M.B.

(6) Where objection is made to the Ontario Municipal Board under subsection (5), the Board may by order make all such adjustments of assets and liabilities as between the Township and the City as the Board may consider equitable, and sections 94 and 95 of the *Ontario Municipal Board Act* do not apply to decisions or orders made under this subsection.

R.S.O. 1980, c. 347

Unpaid taxes

4.—(1) All taxes levied under any general or special Act and uncollected in the annexed area which are due and unpaid on the 31st day of December, 1983, shall after that date be taxes due and payable to the City and may be collected and recovered by the City as if the taxes had been imposed by the City.

Special roll

(2) The clerk of the Township shall forthwith prepare and furnish to the clerk of the City a special collector's roll showing all arrears of taxes or special rates assessed against the lands in the annexed area up to the 31st day of December, 1983, and the persons assessed therefor.

By-laws

5.—(1) On and after the 1st day of January, 1984, the by-laws of the City extend to the annexed area and the by-laws of the Township cease to apply to such area, except by-laws relating to highways and by-laws passed by the Township under section 34 of the *Planning Act, 1983* or a predecessor of that section which shall remain in force until amended or repealed by the council of the City, and except by-laws conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by the council of the Township.

1983, c. 1

Zoning by-law of Township deemed by-law of City

(2) On and after the 1st day of January, 1984, By-law No. 83-15 of the Township, in so far as it applies to the annexed area, shall be deemed to be a by-law of the City and to have been submitted to the Ontario Municipal Board for approval.

Official plan

(3) The provisions of the official plan of the Township as they pertain to the annexed area shall be deemed to be provisions of the official plan of the City.

(4) The Minister shall remain seized of the portions of the official plan submitted to the Minister by the Township for approval that pertain to the annexed area and that as of the 1st day of January, 1984 have not been approved by the Minister and when and if such additional portions are approved they shall be deemed to be provisions of the official plan of the City. Deferred portions of official plan

6.—(1) Notwithstanding any general or special Act, the Minister may provide at any time by order, that in the years 1984, 1985, 1986, 1987 and 1988 and in the manner specified in the order, the council of the City shall levy and impose on the whole of the annexed area and on the whole of the remainder of the City rates of taxation for general purposes and rates and charges for special purposes that are different than the rates and charges that would have been levied or imposed for such purposes but for the provisions of this section. Rates of taxation

(2) An order made under subsection (1) may provide for rates of taxation for general purposes and rates and charges for special purposes in defined areas of the annexed area lower than the rates generally applicable in the City to reflect the extent to which the annexed area does not receive City services, and the rates may vary among the defined areas. Idem

7. The City shall pay to the Township as compensation for the loss of assessment caused by the annexation provided for in section 2 such amounts, and in such manner, as the City and the Township may agree upon or, failing agreement, as the Ontario Municipal Board upon application considers equitable. Compensation for loss of assessment

8.—(1) Where the Minister is of the opinion that property taxes in the Township or in the City, or in any part thereof, are unduly high or have been or may be unduly increased because of the annexation provided for in section 2, the Minister may, by order, make a grant to the Township or the City under such terms and conditions as the Minister considers appropriate. Compensating grants

(2) The moneys required for the purposes of subsection (1) shall, until the 31st day of March, 1984, be paid out of the Consolidated Revenue Fund, and thereafter, out of the moneys appropriated therefor by the Legislature. Moneys

9. On and after the 1st day of January, 1984 and until the council of the City to be elected at the general election to be held in 1985 is organized as provided for in section 49 of the *Municipal Act*, the head of the council of the Township, or such other person, a member of the council of the Township at the *Ex officio* member of City council

R.S.O. 1980, c. 302

time of his appointment, as the council of the Township may by by-law appoint, is *ex officio* a member of the council of the City.

Redivision of wards

10.—(1) For the purposes of the general election to be held in 1985, the Minister may, by order, redivide the City into wards taking into consideration the land annexed to the City by section 2 and such wards shall remain in effect until altered by the Ontario Municipal Board.

Composition of council

(2) An order made under subsection (1) may provide for the composition of the council of the City which composition shall remain in effect until altered in accordance with the provisions of the *Municipal Act*, and may provide that the composition of council shall be deemed to have been provided for by by-law of the City.

R.S.O. 1980, c. 302

Powers of L.G. in C.

11. The Lieutenant Governor in Council, upon the recommendation of the Minister, may authorize all such acts or things not specifically provided for in this Act that in the opinion of the Minister are necessary or advisable to carry out effectively the purposes or intent of this Act.

Commencement

12. This Act comes into force on the day it receives Royal Assent.

Short title

13. The short title of this Act is the *Barrie-Vespra Annexation Act, 1983*.

SCHEDULE

Commencing at a point on the southerly boundary of the Township of Vespra distant 0.63 metres measured easterly therealong from the southerly prolongation of the centre line of Concession VIII;

Thence north 02° 23′ 30″ west 1031.30 metres to a point;

Thence north 17° 20′ 10″ west 209.69 metres to a point;

Thence north 13° 25′ 40″ west 34.39 metres to a point;

Thence north 09° 52′ 40″ west 49.64 metres to a point;

Thence north 04° 07′ 30″ west 38.94 metres to a point;

Thence north 06° 33′ 50″ east 17.04 metres to a point;

Thence north 20° 31′ east 123.52 metres to a point on the westerly limit of the road allowance between concessions VII and VIII distant 92.06 metres measured north 31° 34′ 30″ west from the easterly angle of Lot 22 in Concession VIII;

Thence north 20° 31′ east 118.13 metres to a point;

Thence north 12° 09′ 40″ east 13.38 metres to a point;

Thence north 0° 30′ 20″ west 12.77 metres to a point;

Thence north 06° 30′ 10″ west 68.49 metres to a point;

Thence north 09° 36′ 40″ west 494.44 metres to a point;

Thence north 03° 32′ east 132.52 metres to a point;

Thence north 02° 09′ 50″ west 360.08 metres to a point;

Thence north 11° 02′ 40″ west 146.79 metres to a point in the northwesterly limit of the road allowance between lots 20 and 21 distant 65.23 metres measured south 57° 15′ 20″ west from the easterly limit of the west half of Lot 20 in Concession VII;

Thence north 11° 02′ 40″ west 96.01 metres to a point;

Thence north 07° 04′ 10″ west 191.94 metres to a point;

Thence north 13° 14′ 50″ west 343.12 metres to a point;

Thence north 0° 39′ 40″ east 10.54 metres to a point;

Thence north 15° 59′ 20″ east 11.50 metres to a point;

Thence north 25° 37′ 50″ east 10.91 metres to a point;

Thence north 33° 11′ 50″ east 11.85 metres to a point;

Thence north 45° 32′ 50″ east 493.84 metres to a point on the southwesterly limit of the road allowance between concessions VI and VII distant 139.95 metres measured north 32° 17′ 20″ west from the easterly angle of Lot 19 in Concession VII;

Thence north 45° 32′ 50″ east 1194.38 metres to a point;

Thence north 31° 46′ 30″ east 13.08 metres to a point;

Thence north 20° 46′ 10″ east 272.73 metres to a point on the northeasterly limit of Lot 19 in Concession VI distant 84.49 metres measured south 31° 26′ 50″ east from the northerly angle of the said Lot;

Thence north 20° 46′ 10″ east 45.11 metres to a point;

Thence north 30′ 08″ east 16.52 metres to a point;

Thence north 38° 13′ 10″ east 1408.42 metres to a point;

Thence north 46° 19′ 30″ east 12.00 metres to a point;

Thence north 57° 12′ 20″ east 33.42 metres to a point on the northeasterly limit of Lot 18 in Concession V distant 115.43 metres measured south 31° 39′ 30″ east from the northerly angle of the said Lot;

Thence north 57° 12′ 20″ east 165.88 metres to a point;

Thence north 45° 12′ 20″ east 12.25 metres to a point;

Thence north 38° 56′ 50″ east 608.85 metres to a point;

Thence north 47° 11′ 20″ east 173.05 metres to a point;

Thence north 52° 17′ 10″ east 896.43 metres to a point;

Thence north 51° 30′ 40″ east 13.14 metres to a point;

Thence north 32° 48′ 50″ east 311.35 metres to a point;

Thence north 52° 45′ east 11.92 metres to a point;

Thence north 62° 23′ east 510.14 metres to a point in the southwesterly limit of Lot 15 in Concession II W.P.R. distant 20.52 metres measured south 38° 56′ 30″ east from the westerly angle of the said Lot;

Thence north 62° 23′ east 325.55 metres to a point;

Thence north 55° 57′ east 403.34 metres to a point;

Thence north 74° 37′ 30″ east 282.14 metres to the northeasterly limit of the said Lot 15 distant 167.89 metres measured south 30° 45′ 40″ east from the northerly angle of the said Lot 15;

Thence north 74° 37′ 30″ east 318.49 metres to a point;

Thence north 73° 41′ east 188.49 metres to a point;

Thence north 71° 09′ 40″ east 537.25 metres to a point;

Thence north 63° 16′ 40″ east 201.55 metres to a point in the northeasterly limit of the King's Highway No. 400 distant 18.92 metres measured south 32° 12′ 40″ east from the northerly limit of Lot 15 in Concession I W.P.R.;

Thence north 63° 16′ 40″ east 24.05 metres to a point;

Thence north 58° 07′ 40″ east 679.04 metres to a point;

Thence north 56° 50′ 20″ east 299.25 metres to a point on the westerly limit of the King's Highway No. 93;

Thence north 56° 50′ 20″ east 3.66 metres to a point on the westerly limit of the road allowance between the townships of Vespra and Oro said point being distant 18.49 metres measured southerly from the northeasterly angle of Lot 14 in Concession I W.P.R.;

Thence north 56° 50′ 20″ east 7.62 metres to the easterly boundary of the Township of Vespra;

Thence southerly along the said easterly boundary to the northerly boundary of the City of Barrie;

Thence westerly following the boundaries between the City of Barrie and the Township of Vespra to the place of commencement.

SAVING AND EXCEPTING thereout and therefrom the southeasterly 9.91 metres of the Trans Canada Pipeline as shown on Plans registered in the Registry Office for the Registry Division of Simcoe as Routine Pipeline Plan Nos. 131528, 131529, 131530 and 134934.

APR 23

Bill 143

Arboreal Emblem Act, 1983

The Hon. A. W. Pope
Minister of Natural Resources

1st Reading December 8th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTE

The Bill would adopt the Eastern White Pine as the arboreal emblem of Ontario.

Bill 143 1983

Arboreal Emblem Act, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Arboreal emblem of Ontario

1. The tree known botanically as *Pinus strobus* Linnaeus and popularly known as the Eastern White Pine is adopted as and shall be deemed to be the arboreal emblem of the Province of Ontario.

Commencement

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is the *Arboreal Emblem Act, 1983*.

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

Bill 144



An Act to amend the Retail Sales Tax Act

The Hon. B. Gregory
Minister of Revenue

1st Reading December 8th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTES

The Bill extends the temporary exemption from tax on furniture and major home appliances purchased prior to August 9, 1983 to include appliances and furniture delivered on or after November 8, 1983 and before January 1, 1984. Paragraph 76 of subsection 5 (1) now reads:

> 76. *furniture, as defined by the Minister, including curtains, drapes and blinds, as defined by the Minister, and floor coverings, as defined by the Minister, that are purchased before the 9th day of August, 1983 for private residential use, if delivery thereof is taken by the purchaser on or after the 11th day of May, 1983, and before the 8th day of November, 1983, but only when such furniture, curtains, drapes, blinds and floor coverings have never previously been sold, leased or rented by a dealer to a customer at a retail sale anywhere.*

Clause (c) of paragraph 77 of subsection 5 (1) now reads:

> *(c) purchased before the 9th day of August, 1983, and delivery thereof is taken by the purchaser on or after the 11th day of May, 1983 and before the 8th day of November, 1983.*

Bill 144 1983

An Act to amend the Retail Sales Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

s. 5 (1), par. 76, amended

1.—(1) Paragraph 76 of subsection 5 (1) of the *Retail Sales Tax Act*, being chapter 454 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1983, chapter 27, section 4, is amended by striking out "8th day of November, 1983" in the seventh line and inserting in lieu thereof "1st day of January, 1984".

s. 5 (1), par. 77, cl. (c), amended

(2) Clause (c) of paragraph 77 of the said subsection 5 (1), as re-enacted by the Statutes of Ontario, 1983, chapter 48, section 1, is amended by striking out "8th day of November, 1983" in the third and fourth lines and inserting in lieu thereof "1st day of January, 1984".

Commencement

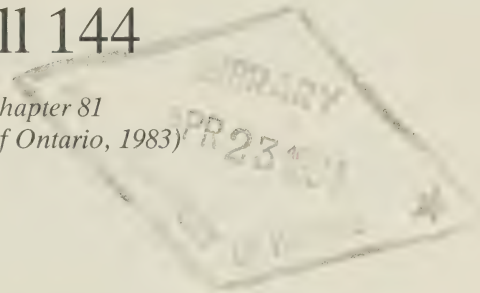
2. This Act shall be deemed to have come into force on the 18th day of October, 1983.

Short title

3. The short title of this Act is the *Retail Sales Tax Amendment Act, 1983*.

Bill 144

(Chapter 81
Statutes of Ontario, 1983)



An Act to amend the Retail Sales Tax Act

The Hon. B. Gregory
Minister of Revenue

1st Reading	December 8th, 1983
2nd Reading	December 13th, 1983
3rd Reading	December 15th, 1983
Royal Assent	December 16th, 1983

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

Bill 144 1983

An Act to amend the Retail Sales Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

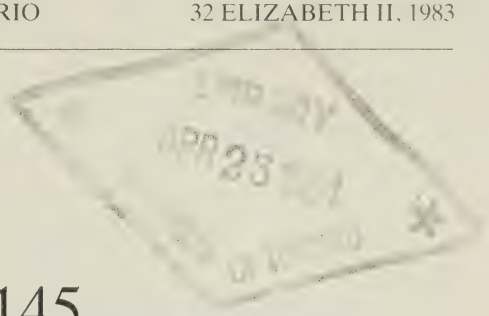
1.—(1) Paragraph 76 of subsection 5 (1) of the *Retail Sales Tax Act*, being chapter 454 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1983, chapter 27, section 4, is amended by striking out "8th day of November, 1983" in the seventh line and inserting in lieu thereof "1st day of January, 1984". s. 5 (1), par. 76, amended

(2) Clause (c) of paragraph 77 of the said subsection 5 (1), as re-enacted by the Statutes of Ontario, 1983, chapter 48, section 1, is amended by striking out "8th day of November, 1983" in the third and fourth lines and inserting in lieu thereof "1st day of January, 1984". s. 5 (1), par. 77, cl. (c), amended

2. This Act shall be deemed to have come into force on the 18th day of October, 1983. Commencement

3. The short title of this Act is the *Retail Sales Tax Amendment Act, 1983*. Short title

Government Publication



Bill 145

An Act to amend the Planning Act, 1983

The Hon. C. Bennett
Minister of Municipal Affairs and Housing

1st Reading December 8th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTES

Section 74 of the *Planning Act, 1983* provides generally for transitional matters consequent on the coming into force of the new Act on August 1, 1983.

SECTION 1.—Subsection 1. Clauses 74 (3) (b) and (f) deal with applications made to a council to amend an official plan or a zoning by-law, respectively, and in their present form have given rise to some uncertainty as to whether any particular application commenced before August 1, 1983 is to be continued and disposed of under the former *Planning Act* or the new *Planning Act*. It is proposed therefore to repeal those clauses and to enact three new subsections to clarify the matter.

Subsection 2. New subsection (4) provides that where a council declines to make an amendment to an official plan that has been requested, the matter shall be disposed of under the former *Planning Act*; where a council accedes to the requested amendment, the matter shall be disposed of under either the former Act or under the *Planning Act, 1983*, as the council determines, but in either event section 94 of the *Ontario Municipal Board Act* (providing for a petition to Cabinet from the Municipal Board decision) applies.

New subsection (5) provides that where an official plan amendment is disposed of under the former *Planning Act*, section 17 of that Act, pertaining to the obtaining of a planning board report, does not apply. (Planning boards, except in Northern Ontario, were dissolved upon the coming into force of the new *Planning Act)*.

New subsection (6) provides for substantially the same procedure as applies to official plan amendments in the case of requested zoning by-law amendments.

Bill 145 1983

An Act to amend the Planning Act, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clauses 74 (3) (b) and (f) of the *Planning Act, 1983*, being chapter 1, are repealed. s. 74 (3) (b, f), repealed

(2) Section 74 of the said Act is amended by adding thereto the following subsections: s. 74, amended

(4) Despite clause (3) (a), where a request to initiate an amendment to an official plan was received by a council before the 1st day of August, 1983, Request to amend official plan, disposition of

(a) if the council refuses to propose the amendment or fails to propose it within thirty days from the receipt of the request and the person who made the request requests the Minister to refer the proposal to the Municipal Board, the matter shall be continued and finally disposed of under the former Act; or

(b) if the council accedes to the request, the matter shall be continued and finally disposed of under either the former Act or under this Act as determined by the council but in either case, section 94 of the *Ontario Municipal Board Act* applies and section 63 of this Act does not apply in respect of the final disposition of the matter. R.S.O. 1980, c. 347

(5) In the case of a request to initiate an amendment to an official plan that is continued and finally disposed of under the former Act as mentioned in subsection (4), the provisions of section 17 of the former Act pertaining to the obtaining of a planning board report do not apply. Report of planning board

(6) Despite clause (3) (e), where an application to amend a zoning by-law was received by a council before the 1st day of August, 1983, Request to amend zoning by-law, disposition of

(a) if the council refuses the application or refuses or neglects to make a decision thereon within one month after the receipt of the application and the applicant appeals to the Municipal Board, the matter shall be continued and finally disposed of under the former Act;

(b) if the council accedes to the request, the matter shall be continued and finally disposed of under either the former Act or under this Act as determined by the council but in either case, section 94 of the *Ontario Municipal Board Act* applies and section 63 of this Act does not apply in respect of the final disposition of the matter.

R.S.O. 1980, c. 347

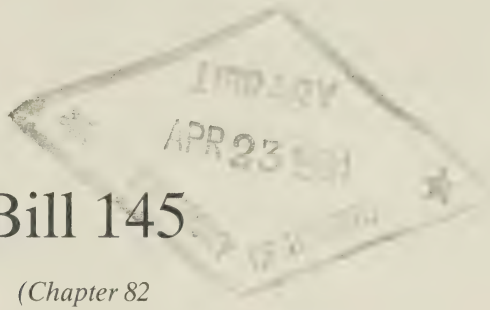
Commencement

2. This Act shall be deemed to have come into force on the 1st day of August, 1983.

Short title

3. The short title of this Act is the *Planning Amendment Act, 1983*.

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983



Bill 145

(Chapter 82
Statutes of Ontario, 1983)

An Act to amend the Planning Act, 1983

The Hon. C. Bennett
Minister of Municipal Affairs and Housing

1st Reading	December 8th, 1983
2nd Reading	December 13th, 1983
3rd Reading	December 15th, 1983
Royal Assent	December 16th, 1983

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

Bill 145 1983

An Act to amend the Planning Act, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clauses 74 (3) (b) and (f) of the *Planning Act, 1983*, being chapter 1, are repealed. s. 74 (3) (b, f), repealed

(2) Section 74 of the said Act is amended by adding thereto the following subsections: s. 74, amended

(4) Despite clause (3) (a), where a request to initiate an amendment to an official plan was received by a council before the 1st day of August, 1983, Request to amend official plan, disposition of

(a) if the council refuses to propose the amendment or fails to propose it within thirty days from the receipt of the request and the person who made the request requests the Minister to refer the proposal to the Municipal Board, the matter shall be continued and finally disposed of under the former Act; or

(b) if the council accedes to the request, the matter shall be continued and finally disposed of under either the former Act or under this Act as determined by the council but in either case, section 94 of the *Ontario Municipal Board Act* applies and section 63 of this Act does not apply in respect of the final disposition of the matter. R.S.O. 1980, c. 347

(5) In the case of a request to initiate an amendment to an official plan that is continued and finally disposed of under the former Act as mentioned in subsection (4), the provisions of section 17 of the former Act pertaining to the obtaining of a planning board report do not apply. Report of planning board

(6) Despite clause (3) (e), where an application to amend a zoning by-law was received by a council before the 1st day of August, 1983, Request to amend zoning by-law, disposition of

(a) if the council refuses the application or refuses or neglects to make a decision thereon within one month after the receipt of the application and the applicant appeals to the Municipal Board, the matter shall be continued and finally disposed of under the former Act;

(b) if the council accedes to the request, the matter shall be continued and finally disposed of under either the former Act or under this Act as determined by the council but in either case, section 94 of the *Ontario Municipal Board Act* applies and section 63 of this Act does not apply in respect of the final disposition of the matter.

R.S.O. 1980, c. 347

Commencement

2. This Act shall be deemed to have come into force on the 1st day of August, 1983.

Short title

3. The short title of this Act is the *Planning Amendment Act, 1983*.

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3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983



Bill 146

An Act to amend the Public Utilities Act

The Hon. C. Bennett
Minister of Municipal Affairs and Housing

1st Reading December 8th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTE

The proposed subsections 43 (1a) to (1c) will permit public utilities commissions to pay the expenses incurred by their members. A commission will be authorized to provide for the reimbursement of the actual expenses incurred or may provide for the payment on an allowance basis. For example, expenses for travelling by automobile could be paid on the basis of actual cost or on the basis of a rate for each kilometre travelled.

Bill 146 1983

An Act to amend the Public Utilities Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 43 of the *Public Utilities Act*, being chapter 423 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsections: s. 43, amended

(1a) A commission may provide by resolution for the payment in whole or in part of such expenses of its members as are actually incurred as a result of their acting in their capacity as members and as are authorized by the resolution. Expenses

(1b) A resolution passed under subsection (1a) may set maximum amounts or rates that may be paid in respect of any expense for which payment is authorized by the resolution. Maximum amounts

(1c) A resolution passed under subsection (1a) may provide for the payment of a specified amount or of amounts calculated according to a specified rate in lieu of the amount of actual expenses incurred in respect of items of expenditure specified in the resolution where the specified amounts or rates, in the opinion of the commission, reasonably reflect the actual expenses that would be incurred. Expense allowances

2. This Act comes into force on the day it receives Royal Assent. Commencement

3. The short title of this Act is the *Public Utilities Amendment Act, 1983*. Short title

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983



Bill 147

An Act to amend the Building Code Act

The Hon. C. Bennett
Minister of Municipal Affairs and Housing

1st Reading December 8th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTE

The proposed amendments to section 19 of the Act will authorize the Lieutenant Governor in Council to make regulations,

(a) conferring a discretion on chief building officials to allow variations from the Building Code with respect to construction in relation to an existing building; and

(b) requiring the upgrading of those parts of existing buildings affected by construction in relation to the building.

Bill 147 1983

An Act to amend the Building Code Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. **Subsection 19 (1) of the *Building Code Act*, being chapter 51 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clauses:** s. 19 (1), amended

(oa) permitting chief officials, subject to such conditions as are set out in the regulations, to allow the use of materials, techniques and designs that are other than those prescribed by the regulations with respect to construction in relation to an existing building;

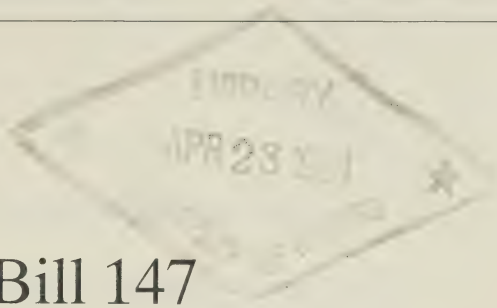
(ob) requiring the alteration of any part or parts of an existing building where construction in relation to the building affects the part or parts.

2. **This Act comes into force on the day it receives Royal Assent.** Commencement

3. **The short title of this Act is the *Building Code Amendment Act, 1983*.** Short title

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

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Bill 147

(Chapter 83
Statutes of Ontario, 1983)

An Act to amend the Building Code Act

The Hon. C. Bennett
Minister of Municipal Affairs and Housing

1st Reading	December 8th, 1983
2nd Reading	December 13th, 1983
3rd Reading	December 15th, 1983
Royal Assent	December 16th, 1983

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

Bill 147 1983

An Act to amend the Building Code Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 19 (1) of the *Building Code Act*, being chapter 51 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clauses: s. 19 (1), amended

(oa) permitting chief officials, subject to such conditions as are set out in the regulations, to allow the use of materials, techniques and designs that are other than those prescribed by the regulations with respect to construction in relation to an existing building;

(ob) requiring the alteration of any part or parts of an existing building where construction in relation to the building affects the part or parts.

2. This Act comes into force on the day it receives Royal Assent. Commencement

3. The short title of this Act is the *Building Code Amendment Act, 1983*. Short title

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Bill 148

An Act to revise the Teachers' Superannuation Act

The Hon. B. Stephenson
Minister of Education and Minister of Colleges and Universities

1st Reading December 8th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTES

The Bill revises the *Teachers' Superannuation Act* and makes a number of changes. The main changes are as follows:

1. The contribution rates are changed from 4.2 per cent and 6 per cent to 5.1 per cent and 6.9 per cent of salary.

2. The Act now requires boards to forward deducted contributions to the Commission on or before the 15th day of the next month. The Bill requires the transfer of these deducted amounts on or before the last day of the month in which the salary is paid. The Bill also provides that overdue transfers will bear interest at a rate equal to the Bank of Canada rate plus 4 per cent.

3. Allowances under the Act will now be computed on the basis of the average salary for the five years, rather than seven years, during which the person's salary was highest.

4. The *Canada Pension Plan* offset, instead of being computed on the basis of the year's maximum pensionable earnings under the *Canada Pension Plan* at the time the person ceased to be employed, will now be computed on the basis of the average of the Year's Maximum Pensionable Earnings under the *Canada Pension Plan* of the year in which the person ceased to be employed in education and each of the two preceding years.

5. The Bill provides for superannuation allowances in the following circumstances:

    i. Where a person has credit in the Fund for a number of years of service that, when added to the person's age on the date when the person ceases to be employed in education, totals at least ninety years.

    ii. Where a person has credit in the Fund for ten or more years of service, ceases to be employed in education, and does not qualify under subparagraph i.

    iii. Where a person ceases to be employed in education after attaining forty-five years of age and has credit in the Fund for less than ten years of service but has been in the service of the person's last employer for a continuous period of ten years.

6. The provision, in section 36 of the Act, that a dependant's allowance paid to a widow or widower is discontinued on the remarriage of the widow or widower, is not carried forward in the Bill. A surviving spouse who remarries will continue to be entitled to a survivor allowance.

7. For the purposes of the survivor allowance, the term "widow or widower" is replaced by the term "spouse" and this term is given the extended meaning it has in Part II of the *Family Law Reform Act,* which is as follows:

(b) "spouse" means a spouse as defined in section 1, and in addition includes,

(i) either of a man and woman not being married to each other who have cohabited,

(A) continuously for a period of not less than five years, or

(B) in a relationship of some permanence where there is a child born of whom they are the natural parents,

and have so cohabited within the preceding year, and

(ii) either of a man and woman between whom an order for support has been made under this Part or an order for alimony or maintenance has been made before this Part comes into force.

The definition of "spouse" in section 1 of the *Family Law Reform Act* is as follows:

(f) "spouse" means either of a man and woman who,

(i) are married to each other,

(ii) are married to each other by a marriage that is voidable and has not been voided by a judgment of nullity, or

(iii) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or have cohabited within the preceding year.

8. A person who expects to become entitled to an allowance under the Act will be able to direct the Commission to increase the survivor allowance related to the person's allowance to 55 per cent, 60 per cent, 65 per cent, 70 per cent or 75 per cent of the amount of the allowance instead of the usual 50 per cent. The amount of the person's allowance will be actuarially reduced to allow for the increase in the survivor allowance.

9. A person receiving an allowance under the Act who marries after ceasing to be employed in education may direct the Commission to pay a survivor allowance to a dependant and the person's allowance will be actuarially reduced to allow for the survivor allowance.

10. The method of calculating a survivor allowance that is paid to a dependant other than a spouse or child is changed to correspond to the method used where a person who expects to receive an allowance directs the Commission to increase the survivor allowance related to the person's allowance.

11. The provisions of the Act related to contributions on behalf of a person in the event of a long term disability (section 39 of the Act) are expanded to provide for contributions on behalf of a contributor who is qualified for a benefit under a long term income protection plan under the *Public Service Act*, and to provide for additional contributions to the Fund by a person receiving income under an agreement approved by the Commission that does not provide for additional contributions related to the cost of living.

12. The provision (in subsection 46 (1) of the Act) that a superannuation allowance ceases when the person becomes re-employed, is changed so that the person will continue to receive the allowance subject to the conditions and in a reduced amount calculated in the manner prescribed by the regulations, but the person may elect to cease to receive the allowance while employed in education.

13. Specific provisions are added dealing with computations related to entitlements in respect of part-time employment in education.

14. Section 51 of the Act provides that the interest of a person in the Fund or in an allowance under the Act is not subject to garnishment, attachment, seizure or other process of law. The Bill provides an exception in respect of moneys payable in satisfaction of an order for support under the *Family Law Reform Act*. The exception is similar to the exception set out in subsection 27 (2) of the *Pension Benefits Act*.

15. The refund entitlements set out in section 53 of the Act are expanded. Subsection 53 (2) of the Act provides for a refund to a person who was employed in education for at least twenty days in the calendar year in which he attained forty-five years of age. That provision is expanded so that the employment may be in that year or in any later year. Also, the Bill provides for a refund of twice the amount of the person's contributions with interest at the Fund rate (a defined term), to a person who has less than ten years credit in the Fund and who ceases to be employed in education in or after the calendar year in which the person attains or would attain sixty-five years of age.

16. A person who has taken a refund of contributions may be reinstated in the Fund for the purpose of a transfer of credits to another pension plan. The conditions are that there must be a reciprocal agreement in force under the Act, the person must be a contributor to the other pension plan in respect of twenty or more days in a school year and the person must make the required refund to the Fund.

17. Under sections 56 and 57 of the Act refunds are payable to the personal representatives of contributors to the Fund who die with no survivor allowance becoming payable. The sections provide for refunds out of the Fund with interest to the date of death. This is changed to provide for interest to the end of the month in which the person dies. Also, the sections provide for payment of interest out of the Fund on the amounts refunded at the rate of 3 per cent per year. This is changed to the Fund rate. The term "Fund rate" is defined, in relation to any year, as "the weighted average yield of the debentures held by the Fund as at the 31st day of December in the previous year".

18. The provision, in subsection 25 (7) of the Act, related to the *Superannuation Adjustment Benefits Act* is expanded to set out the role of the Commission in the administration of the Superannuation Adjustment Fund in relation to this pension plan.

19. At present the Teachers' Superannuation Commission is composed of six persons appointed by the Minister of Education and five persons elected by contributors to the Fund. The Bill will reduce to five the number of members appointed by the Minister.

20. At present the chairman of the Commission is appointed by the Minister from the members of the Commission to hold office for three years. Under the Bill the chairman will be elected for a one-year term and will be elected in alternate years by and from among the elected members of the Commission or the appointed members of the Commission.

21. The quorum of the Commission is reduced from eight members to seven members.

22. The members of the Commission are protected against liability for acts or omissions in the performance or intended performance of powers or duties under the Act or the regulations.

23. Currently, the Commission may in its own name contract and be contracted with and sue and be sued in respect of property. The Bill will remove the reference to property now contained in subsection 3 (3) of the Act, so that the powers of the Commission in these matters will be the same as those of a corporation.

24. Superannuation allowances and disability allowances under the Bill are made applicable as of the 1st day of September, 1984 to persons who ceased to be employed in education on or after the 31st day of May, 1982.

Bill 148 1983

An Act to revise the Teachers' Superannuation Act

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Interpretation

1.—(1) In this Act,

(a) "average salary", of a person, means the person's average salary for the five years during which the person's salary was highest;

(b) "Bank of Canada rate" means the rate of interest set by the Bank of Canada for loans by the Bank of Canada to the chartered banks, as published by the Bank of Canada;

R.S.O. 1980, c. 129

(c) "board" has the same meaning as in the *Education Act*;

R.S.O. 1980, c. 152

(d) "child" has the same meaning as in the *Family Law Reform Act*;

(e) "Commission" means Teachers' Superannuation Commission;

(f) "Commission bank account" means the account kept in a chartered bank of Canada under this Act in the name of the Treasurer as custodian of the Fund;

(g) "debenture rate", in relation to a fiscal year, means the weighted average of the rate of interest of the Province of Ontario debentures issued in the fiscal year under section 72;

(h) "designated organization" means an organization designated by the Lieutenant Governor in Council for the purpose of this Act and the regulations;

(i) "designated private school" means a school, college, academy or other educational institution designated by the Lieutenant Governor in Council as a private school for the purpose of this Act and the regulations;

(j) "employed in education" means engaged for any period,

(i) as a teacher in a school within the meaning of the *Education Act*, R.S.O. 1980, c. 129

(ii) as a teacher in a school or class prescribed by the regulations,

(iii) as a teacher in a school outside Ontario under a teacher exchange system authorized by the Minister of Education,

(iv) as a teacher by the minister of a ministry of the Government of Ontario,

(v) as a teacher on the staff of the faculty of education of an Ontario university,

(vi) as a teacher in a designated private school,

(vii) as an employee by a board or in the Ministry of Education,

(viii) by the Minister of Education or a board in any capacity prescribed by the regulations,

(ix) as an employee of a designated organization in a capacity prescribed by the regulations,

but no person shall be deemed to be employed in education who,

R.S.O. 1980, c. 129

(x) is not qualified as a teacher under the *Education Act* and the regulations under that Act,

(xi) is regularly engaged outside Ontario and who is performing services in Ontario under a teacher exchange system approved by the Minister of Education, or

(xii) is a contributor to a fund to which the Crown contributes except the Teachers' Superannuation Fund, the Superannuation Adjustment Fund and the *Canada Pension Plan*,

R.S. C. 1970, c. C-5

and "employment in education" has a corresponding meaning;

(k) "employer", in relation to a person employed in education, means employer in relation to the person's employment in education;

R.S.O. 1980, c. 291

(l) "fiscal year" has the same meaning as in the *Ministry of Treasury and Economics Act*;

(m) "Fund" means Teachers' Superannuation Fund;

(n) "Fund rate", in relation to a year, means the weighted average yield of the debentures held by the Fund as at the 31st day of December in the previous year;

(o) "Minister" means the member of the Executive Council to whom the administration of this Act is assigned;

(p) "regulations" means regulations made under this Act;

(q) "salary" means remuneration paid for services in employment in education, and includes a cost of living allowance paid in relation to the remuneration;

(r) "school year" means the period from and including the 1st day of September in one year to and including the 31st day of August in the next year;

R.S.O. 1980, c. 152

(s) "spouse" has the same meaning as in Part II of the *Family Law Reform Act*;

(t) "Treasurer" means Treasurer of Ontario and Minister of Economics;

(u) "unfunded liability base" means the unfunded liability of the Fund as of the 31st day of December, 1981 according to the 1981 Revised Valuation of the Fund by the actuary of the Commission;

(v) "unfunded liability of the Fund" means the amount by which the assets of the Fund are less than the liabilities of the Fund;

(w) "Year's Maximum Pensionable Earnings Average", of a person, means the average of the Year's Maximum Pensionable Earnings under the *Canada Pension Plan* of the year in which the person ceased to be employed in education and each of the two preceding years. R.S. C. 1970, c.C-5

Teacher

(2) Every person,

(a) to whom the Minister of Education has granted a certificate of qualification or a letter of standing; or

(b) in respect of whom the Minister of Education has granted a letter of permission to a board,

shall be deemed to be qualified as a teacher for the purposes of this Act so long as the certificate of qualification, letter of standing, or letter of permission granted in respect of the person remains valid. R.S.O. 1980, c. 494, s. 1.

Salary

(3) For the purposes of this Act, "salary" does not include remuneration for services other than services in employment in education, does not include payment of an amount for expenses (whether the amount is accountable or non-accountable), does not include a perquisite related to employment, does not include payment related to accumulated sick leave or other benefit credits, and does not include payment related to retirement or severance from employment, whether or not the remuneration, payment or perquisite is a term or condition of employment in education. R.S.O. 1980, c. 494, s. 24 (4, 5).

Credit for service

(4) For the purpose of computing the annual superannuation allowance or disability allowance to which a person is entitled under this Act, a person is entitled to a year of credit in the Fund for each school year, and to a proportionate part of a year of credit in the Fund for each part of a school year, for which contributions are made to the Fund by or on behalf of the person. R.S.O. 1980, c. 494, s. 29 (6).

Age of child attending school

(5) For the purpose of determining entitlement to a survivor allowance under this Act, a person who has attained the age of eighteen years but has not attained the age of twenty-five years and who is in full-time attendance at a school, college, university or other institution that is recognized by the Commission as a place of higher education, shall be deemed not to have attained the age of eighteen years. R.S.O. 1980, c. 494, s. 36 (5).

Vested interest in allowance

(6) For the purpose of determining entitlement to a survivor allowance related to an allowance under this Act, the person who, upon ceasing to be employed in education, is or would be entitled to the allowance under this Act has a vested interest in the allowance under this Act.

Bank of Canada rate

(7) For the purpose of establishing the Bank of Canada rate, the periodic publication entitled the Bank of Canada Review purporting to be published by the Bank of Canada is admissible in evidence as conclusive proof of the Bank of Canada rate as set out therein, without further proof of the authenticity of the publication. *New*.

CONTRIBUTIONS

Contribution rates R.S.C. 1970, c. C-5

2.—(1) Every person employed in education who contributes under the *Canada Pension Plan* shall contribute to the Fund from the salary paid to the person for the calendar year,

(a) 6.9 per cent of the part thereof below the Year's Basic Exemption as prescribed by the *Canada Pension Plan*;

(b) 5.1 per cent of the part thereof between the Year's Basic Exemption and the Year's Maximum Pensionable Earnings as prescribed by the *Canada Pension Plan*; and

(c) 6.9 per cent of the part thereof in excess of the Year's Maximum Pensionable Earnings.

Idem

(2) Every person employed in education who does not contribute under the *Canada Pension Plan* shall contribute to the Fund 6.9 per cent of salary.

Salaries under $10,000

(3) Where the annual rate of salary is less than $10,000, it shall, for the purposes of this section, be deemed to be at the annual rate of $10,000. R.S.O. 1980, c. 494, s. 24 (1-3).

Exception

(4) Subsections (1) and (2) do not apply to a person in a designated private school or a designated organization who elects

in accordance with this Act to be excluded from the benefits and obligations of this Act. *New*.

Interpretation

3.—(1) In this section, "due date", in relation to a contribution, means the date on which the employer is required by subsection (3) to deliver the contribution to the Commission.

Deductions by employer

(2) The employer of a person employed in education shall deduct the amount the person is required to contribute to the Fund from the salary paid to the person.

Transfer of contribution

(3) The employer, on or before but not later than the last day of each month in which the salary is paid, shall deliver to the Commission, the amount deducted or shall deposit the amount deducted in the Commission bank account.

Interest

(4) Interest is payable by the employer to the Commission on the amount of each contribution due under subsection (3) from the date the contribution is due to the date the contribution is delivered to the Commission or deposited in the Commission bank account.

Rate of interest

(5) The rate at which the interest is payable is the Bank of Canada rate in effect on the date the contribution is due under subsection (3) plus 4 per cent.

Compound interest

(6) Interest payable under subsection (4) shall be compounded annually on the anniversary of the due date of the contribution in respect of which the interest is payable.

Reports

(7) Every employer of persons employed in education shall report to the Commission from time to time as required by the Commission in respect of contributions deducted. R.S.O. 1980, c. 494, s. 25 (1-4).

Interpretation

4.—(1) In this section, "agreement" means agreement to provide an income in the event of a long term disability to a person who contributes to the Fund.

Long term disability income plans

R.S.O. 1980, cc. 464, 218

(2) An agreement between the Minister of Education, a board, the Ontario Teachers' Federation, an affiliate as defined in the *School Boards and Teachers Collective Negotiations Act* or any other authority approved by the Commission and an insurer within the meaning of the *Insurance Act* is not effective for the purposes of this Act unless approved by the Commission.

Recipient's contributions

(3) The Commission shall accept a contribution made by the insurer or by the employer or former employer, as the case may be, in accordance with an agreement approved by the Commis-

sion on behalf of a person who contributes to the Fund for each month in respect of which the person receives a payment under the agreement where the contribution by the insurer or employer is made on or before the fifteenth day of the month next following the payment, except where the person has attained the age of sixty-five years or is in receipt of an allowance from the Fund and the contributions shall, subject to subsection (5), be 6.9 per cent of the annual rate of salary paid to the person immediately before the cessation of the person's employment in education.

Idem

(4) Where a person who is employed in education qualifies or has qualified for a benefit in respect of a disability incurred on or after the 1st day of July, 1974 under a long term income protection plan established under the *Public Service Act*, R.S.O. 1980, c. 418 whether or not the person is in receipt of the benefit, a contribution of 6.9 per cent of the salary of the person in the month next preceding the month in which the person qualifies or qualified for the benefit shall be made to the Fund on behalf of the person out of moneys appropriated therefor by the Legislature for each month or part of a month for which the person continues to qualify for the benefit, and the person shall be given credit in the Fund for the period of time for which the contribution is made.

Adjustment in line with cost of living

(5) Where an agreement approved by the Commission provides for payments to vary in amount from time to time in accordance with the cost of living, the amount of a contribution accepted by the Commission under subsection (3) shall be increased or decreased, without limitation, in proportion to the increase or decrease in the cost of living.

Adjustments not provided for in agreement

(6) An additional contribution may be made to the Fund by or for a person mentioned in subsection (1) under an agreement approved by the Commission that does not provide for payments to vary from time to time in accordance with the cost of living.

Amount of additional contribution

(7) The amount of an additional contribution under subsection (6) shall be equal to 6.9 per cent of the amount of the increase in the annual rate of salary that would be paid to the person if the annual rate of salary were increased in each year after the person ceased to be employed in education in the same manner as a pension would be increased in each year under the *Superannuation Adjustment Benefits Act* R.S.O. 1980, c. 490 without adjustment to reduce or increase the Consumer Price Index ratio determined under that Act.

Application of additional contributions

(8) An additional contribution under subsection (6) may be made in any year after the first year of contribution but applies

only in respect of the year in which the contribution is made. R.S.O. 1980, c. 494, s. 39.

Contributions by Province

5.—(1) The Treasurer shall deposit in the Commission bank account on the 1st day of January in each year from the Consolidated Revenue Fund an amount equal to the contributions made to the Fund during the year before the preceding year by or on behalf of persons employed in education.

Exceptions

(2) Subsection (1) does not apply in respect of a person employed in education within the meaning of subclause 1 (1) (j) (v), (vi) or (ix).

Idem

(3) Subsection (1) does not apply in respect of persons who under the regulations are themselves required to pay a sum in lieu of the sum that would otherwise be paid by the Treasurer under subsection (1). R.S.O. 1980, c. 494, s. 26 (1, 2), *part*.

Amounts related to contributions under long term disability agreements

(4) Subsection (1) applies in respect of contributions made to the Fund in accordance with section 4 (which relates to long term disability agreements). R.S.O. 1980, c. 494, s. 39 (4).

Interest payable by Treasurer

6.—(1) The Treasurer shall pay interest on the sums placed to the credit of the Fund by the Treasurer under section 5 at the debenture rate for the fiscal year next preceding the fiscal year in which the sum is placed to the credit of the Fund.

Term

(2) The interest on a sum mentioned in subsection (1) is payable from the 1st day of June in the fiscal year preceding the fiscal year in which the sum is placed to the credit of the Fund to the date that the sum is placed to the credit of the Fund. R.S.O. 1980, c. 494, s. 27.

Contributions by certain organizations

7.—(1) An organization that employs a person mentioned in subsection 5 (2), on or before the last day of each month in which the organization pays salary to the person for employment in education, shall deliver to the Commission or shall deposit in the Commission bank account an amount equal to the contributions made to the Fund by or on behalf of the persons employed in education by the organization.

Interest payable by organization

(2) Interest is payable by the organization to the Commission on amounts mentioned in subsection (1) at the same rate and for the same period of time mentioned in section 3. R.S.O. 1980, c. 494, s. 26 (2) (b).

Deficiency

8. When the payments into the Fund in any year are insufficient to make the required payments out of the Fund, the deficiency shall be made up out of the Consolidated Revenue Fund. R.S.O. 1980, c. 494, s. 12.

Private schools

9.—(1) The Lieutenant Governor in Council by order may designate a school, college, academy or other educational institution that meets the criteria set out in subsection (3) as a private school for the purpose of this Act and the regulations.

Effective date of designation

(2) A designation under subsection (1) comes into force on the 1st day of September next following the designation.

Criteria

(3) The criteria referred to in subsection (1) are that the school, college, academy or other educational institution,

(a) is giving instruction equivalent to that given in elementary schools or secondary schools in Ontario;

(b) is not operated for profit or gain and the profits, if any, are used to carry out its objects;

(c) is not supported in any way by school taxes or by provincial or municipal grants; and

(d) by its governing body, undertakes in writing,

(i) to make such annual reports to the Commission as the Commission may require for the purpose of the administration of this Act and to supply such information as to its constitution, operations, teaching staff and otherwise as the Commission may require,

(ii) to pay monthly to the Commission, for those persons on its teaching staff who are contributors to the Fund, the moneys that an employer of persons employed in education is required by this Act to deduct and deliver to the Commission, together with a sum calculated thereon at a rate equal to the rate according to which the Treasurer places sums, related to the moneys that employers of persons employed in education deduct and deliver to the Commission, to the credit of the Fund under this Act, and

(iii) to perform any administrative functions necessary as an employer for the administration of this Act and the regulations.

Qualifications of teacher R.S.O. 1980, c. 129

(4) A teacher in a designated private school may establish credit in the Fund under this section only in respect of teaching service rendered while qualified as a teacher under the *Education Act* and the regulations under that Act.

Nature of teaching service

(5) A teacher in a designated private school may establish credit in the Fund under this section only in respect of teaching service equivalent to that given in elementary schools or secondary schools in Ontario.

Past teaching service

(6) A teacher in a designated private school who has established credit in the Fund under this section is entitled to establish credit in the Fund in respect of past teaching service in a designated private school in accordance with the regulations, to re-establish credit in the Fund in respect of past teaching service in any other school in accordance with this Act and to establish credit in the Fund in respect of active service in accordance with the regulations.

Value of board or lodging as part of salary

(7) The salary of a teacher who contributes to the Fund in relation to employment in a designated private school and who receives board or lodging related to employment by a designated private school shall be deemed to be such amount, having regard for the board or lodging, as is determined by the Commission.

Exception

(8) A person who is a teacher in a school, college, academy or other educational institution on the date it is designated under subsection (1) may elect to be excluded from the benefits and obligations of this Act while employed in a designated private school.

Idem, notice

(9) An election under subsection (8) is not effective unless given in writing to the governing body of the designated private school and to the Commission,

(a) where the person is qualified as a teacher under the *Education Act* and the regulations under that Act when the designation becomes effective, not later than three months after the date when the designation becomes effective; or

(b) where the person becomes qualified as a teacher under the *Education Act* and the regulations under that Act after the date when the designation becomes effective, not later than three months after the person becomes so qualified.

Termination of designation

(10) Upon the recommendation of the Minister, the Lieutenant Governor in Council by order may terminate the designation of a designated private school.

Grounds

(11) The Minister may recommend the termination of a designation where,

(a) the designated private school, by its governing body, has requested the termination of the designation;

(b) the designated private school is not complying with this Act; or

(c) there is a change in the objects or mode of carrying out the objects of the designated private school.

Notice and submissions

(12) Before recommending the termination of the designation of a designated private school, the Minister shall give notice of the proposed recommendation to the governing body of the designated private school and to the employees of the designated private school who are employed in education and shall receive and consider the written submissions, if any, made within a reasonable time by the governing body and the employees of the designated private school.

Effective date

(13) An order by the Lieutenant Governor in Council terminating the designation of a designated private school is effective the 31st day of August next following the date of the order.

Effect of termination of designation

(14) Upon the termination of the designation of a designated private school, the persons who are teachers in the school, college, academy or other educational institution shall, for the purposes of this Act, be deemed to cease to be employed in education. R.S.O. 1980, c. 494, s. 21.

Organizations

10.—(1) The Lieutenant Governor in Council by order may designate an organization that meets the criteria set out in subsection (3) as an organization for the purpose of this Act and the regulations.

Effective date of designation

(2) A designation under subsection (1) comes into force on the 1st day of September next following the designation.

Criteria

(3) The criteria referred to in subsection (1) are that the organization,

(a) provides services related to elementary or secondary education;

(b) is not operated for profit or gain and the profits, if any, are used to carry out its objects; and

(c) by its governing body, undertakes in writing,

(i) to make such annual reports to the Commission as the Commission may require for the purpose of the administration of this Act and to supply such information as to its constitution, operations, teaching staff and otherwise as the Commission may require,

(ii) to pay monthly to the Commission, for those of its employees who are contributors to the Fund, the moneys that an employer of persons employed in education is required by this Act to deduct and deliver to the Commission, together with a sum calculated thereon at a rate equal to the rate according to which the Treasurer places sums, related to the moneys that employers of persons employed in education deduct and deliver to the Commission, to the credit of the Fund under this Act, and

(iii) to perform any administrative functions necessary as an employer for the administration of this Act and the regulations.

Qualifications for credit

(4) A person employed by a designated organization in a capacity prescribed by the regulations may establish credit in the Fund under this section only in respect of employment while qualified as a teacher under the *Education Act* and the regulations under that Act.

R.S.O. 1980, c. 129

Past employment

(5) A person who is employed by a designated organization in a capacity prescribed by the regulations and who establishes credit in the Fund under this section is entitled to establish credit in the Fund in respect of past employment by a designated organization in a capacity prescribed by the regulations and to establish credit in the Fund in respect of active service in accordance with the regulations.

Value of board or lodging as part of salary

(6) The salary of a person who contributes to the Fund in relation to employment by a designated organization and who receives board or lodging related to employment by a designated organization shall be deemed to be such amount, having regard for the value of the board or lodging, as is determined by the Commission.

Exception

(7) A person who is employed by an organization on the date it is designated under subsection (1) may elect to be excluded from the benefits and obligations of this Act while employed by a designated organization.

Idem, notice

(8) An election under subsection (7) is not effective unless given in writing to the governing body of the designated organization and to the Commission,

R.S.O. 1980, c. 129

(a) where the person is qualified as a teacher under the *Education Act* and the regulations under that Act when the designation becomes effective, not later than three months after the date when the designation becomes effective;

(b) where the person becomes qualified as a teacher under the *Education Act* and the regulations under that Act after the date when the designation becomes effective, not later than three months after the person becomes so qualified.

Termination of designation

(9) Upon the recommendation of the Minister, the Lieutenant Governor in Council by order may terminate the designation of a designated organization.

Grounds

(10) The Minister may recommend the termination of a designation where,

(a) the designated organization, by its governing body, has requested the termination of the designation;

(b) the designated organization is not complying with this Act; or

(c) there is a change in the objects or mode of carrying out the objects of the designated organization.

Notice and submissions

(11) Before recommending the termination of the designation of a designated organization, the Minister shall give notice of the proposed recommendation to the governing body of the designated organization and to the employees of the designated organization who are employed in education and shall receive and consider the written submissions, if any, made within a reasonable time by the governing body and the employees of the designated organization.

Effective date

(12) An order by the Lieutenant Governor in Council terminating the designation of a designated organization is effective the 31st day of August next following the date of the order.

(13) Upon the termination of the designation of a designated organization, the persons who are engaged by the organization shall, for the purposes of this Act, be deemed to cease to be employed in education. *New*. Effect of termination of designation

11. A person employed on the staff of a college of applied arts and technology who, under a predecessor of this Act, is deemed to be employed in education and, Colleges of applied arts and technology

(a) who continues to be employed full-time on the staff of a college of applied arts and technology on the date this section comes into force, shall be deemed to have continued to be and to continue to be employed in education in each school year in which the person was or is employed full-time on the staff of a college of applied arts and technology;

(b) who is employed part-time on the staff of a college of applied arts and technology on the date this section comes into force, shall be deemed to have continued to be and to continue to be employed in education in each school year in which the person was or is employed part-time or full-time on the staff of a college of applied arts and technology; or

(c) who changes from full-time to part-time employment on the staff of a college of applied arts and technology after the date this section comes into force, shall be deemed not to be employed in education as of the date on which the person ceases to be employed full-time on the staff of the college. *New*.

SUPERANNUATION ALLOWANCES

12.—(1) Every person who ceases to be employed in education and who has a number of years of credit in the Fund that, when added to the person's age on the date when the person ceases to be employed in education, totals at least ninety years is entitled to an annual superannuation allowance during the person's lifetime. R.S.O. 1980, c. 494, s. 28 (2). Allowance where years of credit plus age equal ninety

(2) The amount of the annual superannuation allowance to which a person is entitled under this section shall be computed as follows: Computation of allowance

1. Multiply an amount equal to 2 per cent of the average salary of the person by the number of years, not exceeding thirty-five, for which the person has credit in the Fund.

R.S.C. 1970, c. C-5

2. Where the person has contributed to the *Canada Pension Plan*, reduce the amount computed under paragraph 1 by an amount equal to 0.7 per cent of that part of the average salary of the person that does not exceed the Year's Maximum Pensionable Earnings Average of the person multiplied by the number of years, not exceeding thirty-five, for which the person has credit in the Fund after the year 1965.

3. Where the person ceased to be employed in education before attaining the age at which the person could become eligible for a benefit under the *Canada Pension Plan* or commences to receive a disability pension under the *Canada Pension Plan*, the reduction under paragraph 2 does not apply until the first day of the month next following the month in which the person attains such age. R.S.O. 1980, c. 494, s. 29.

Commencement of allowance

(3) An annual superannuation allowance under this section shall commence as of the first day of the month next following the month in which the person entitled to the allowance ceases to be employed in education. R.S.O. 1980, c. 494, s. 43 (1).

Allowance after ten or more years of credit

13.—(1) Every person who contributes to the Fund and who meets the qualifications set out in subsection (2) is entitled to an annual superannuation allowance during the person's lifetime.

Qualifications for allowance

(2) The qualifications for an annual superannuation allowance under this section are:

1. The person must have ten or more years of credit in the Fund.

2. The person must have ceased to be employed in education.

3. The number of years for which the person has credit in the Fund plus the person's age when the person ceases to be employed in education must total less than ninety years.

Computation of allowance

(3) The amount of an annual superannuation allowance under this section shall be computed as follows:

1. Multiply an amount equal to 2 per cent of the average salary of the person by the number of years, not exceeding thirty-five, for which the person has credit in the Fund.

2. Where the person has contributed to the *Canada Pension Plan*, reduce the amount computed under paragraph 1 by an amount equal to 0.7 per cent of that part of the average salary of the person that does not exceed the Year's Maximum Pensionable Earnings Average of the person multiplied by the number of years, not exceeding thirty-five, for which the person has credit in the Fund after the year 1965. R.S.C. 1970, c. C-5

3. Where the person ceased to be employed in education before attaining the age at which the person could become eligible for a benefit under the *Canada Pension Plan* or commences to receive a disability pension under the *Canada Pension Plan*, the reduction under paragraph 2 does not apply until the first day of the month next following the month in which the person attains such age.

4. In the case of an allowance that is to commence before the first day of the month following the month in which the person attains the age of sixty-five years, reduce the amount computed under paragraphs 1 to 3 at the rate of 5 per cent times the lesser of,

   i. the number of years by which the person's age is less than sixty-five years on the date on which the allowance is to commence, or

   ii. ninety minus the sum of the number of years for which the person has credit in the Fund and the person's age on the date on which the allowance is to commence.

(4) An annual superannuation allowance under this section shall commence, at the option of the person entitled to the allowance, Commencement of allowance

(a) on the first day of any month after the month in which the person attains the age of fifty-five years, if the person is not employed in education at the time the allowance is to commence; or

(b) as of the first day of the month next following the month in which the person entitled to the allowance attains the age of sixty-five years or, where the person is employed in education in the month in which the person attains the age of sixty-five years, on the first day of the month next following the month in

which the person ceases to be employed in education. R.S.O.1980, c. 494, s. 32.

Allowance after ten years of service but less than ten years of credit

14.—(1) Every person who contributes to the Fund and who meets the qualifications set out in subsection (2) is entitled to an annual superannuation allowance during the person's lifetime.

Qualifications for allowance

(2) The qualifications for an annual superannuation allowance under this section are:

1. The person must have credit in the Fund, but the credit must be for less than ten years.

2. The person must have ceased to be employed in education after attaining the age of forty-five years.

3. The person must have been in the service of the person's last employer for a continuous period of at least ten years.

Computation of allowance

(3) The amount of an annual superannuation allowance under this section shall be computed as follows:

1. Where the person has credit in the Fund for five or more years, multiply an amount equal to 2 per cent of the average salary of the person by the number of years for which the person has credit in the Fund.

2. Where the person has credit in the Fund for less than five years of service, multiply an amount equal to 2 per cent of the average salary of the person during the period of time for which the person has credit in the Fund by the number of years for which the person has credit in the Fund.

R.S.C. 1970, c. C-5

3. Where the person has contributed to the *Canada Pension Plan*, reduce the amount computed under paragraph 1 or 2 by an amount equal to 0.7 per cent of that part of the average salary of the person that does not exceed the Year's Maximum Pensionable Earnings Average of the person multiplied by the number of years for which the person has credit in the Fund after the year 1965.

4. Where the person ceased to be employed in education before attaining the age at which the person could become eligible for a benefit under the *Canada Pension Plan* or commences to receive a disability pension under the *Canada Pension Plan*, the reduc-

tion under paragraph 3 does not apply until the first day of the month next following the month in which the person attains such age.

5. In the case of an allowance that is to commence before the first day of the month following the month in which the person attains the age of sixty-five years, reduce the amount computed under paragraphs 1 to 4 at the rate of 5 per cent times the number of years by which the person's age is less than sixty-five years on the date on which the allowance is to commence.

Minimum allowances

(4) No increase in the amount of an allowance to a prescribed minimum amount applies to a superannuation allowance computed under this section or to a survivor allowance related to such a superannuation allowance.

Exceptions

(5) Subsection (4) does not apply if superannuation allowances under this section or, in the case of survivor allowances, survivor allowances related to such superannuation allowances, are specifically included in the prescribed minimum amounts.

Commencement of allowance

(6) An annual superannuation allowance under this section shall commence, at the option of the person entitled to the allowance,

(a) on the first day of any month after the month in which the person attains the age of fifty-five years, if the person is not employed in education at the time the allowance is to commence; or

(b) as of the first day of the month next following the month in which the person entitled to the allowance attains the age of sixty-five years or, where the person is employed in education in the month in which the person attains the age of sixty-five years, on the first day of the month next following the month in which the person ceases to be employed in education. *New.*

Reduced allowance upon re-employment in education

15.—(1) A person who is receiving a superannuation allowance under this Act and who again becomes employed in education for more than the number of days prescribed by the regulations is entitled to continue to receive the allowance while employed in education subject to the conditions and in a reduced amount calculated in the manner prescribed by the regulations.

Election

(2) A person mentioned in subsection (1) may elect to cease to receive the superannuation allowance while employed in education.

Notice of election

(3) An election under subsection (2) must be made by notice in writing delivered to the Commission.

Effect of not making election

(4) A person mentioned in subsection (1) who does not make an election under subsections (2) and (3) is not entitled, upon ceasing to be employed in education, to an adjustment of the superannuation allowance in respect of contributions or service for the period of employment in education unless the person pays to the Fund an amount equal to the total of the amounts of the superannuation allowance payments received by the person during the period the person was again employed in education together with interest on the amount of each of such superannuation allowance payment.

Interest on amounts repaid

(5) Interest under subsection (4) shall be computed on the amount of each superannuation allowance payment for the period from the date the payment was made out of the Fund to the date of repayment to the Fund at the debenture rate for the fiscal year at the date of re-employment in education. R.S.O. 1980, c. 494, s. 46 (1).

Resumption of superannuation allowance

16.—(1) Where a person ceases to receive a superannuation allowance under this Act because of re-employment in education and the re-employment in education is for less than two years, the person is entitled upon the cessation of the re-employment to the resumption of the superannuation allowance without adjustment of the amount of the allowance as if the election had not been made.

Application for allowance

(2) Where the re-employment in education is for two or more years, the person is entitled upon the cessation of the re-employment to apply for an allowance under this Act. R.S.O. 1980, c. 494, s. 47, *part*.

DISABILITY ALLOWANCES

Disability allowance to person incapable of further employment

17.—(1) Every person who,

(a) has credit in the Fund for ten or more years;

(b) while employed in education becomes mentally or physically incapacitated to a degree that in the opinion of the Commission renders the person incapable of further earning a livelihood;

(c) ceases to be employed in education before the end of the school year in which the person would attain the age of sixty-five years; and

(d) makes application within two years from the date upon which the person was last employed in education,

is entitled, subject to section 25, to an annual disability allowance during the person's lifetime.

Computation of allowance

(2) The amount of the annual disability allowance to which a person is entitled under this section shall be computed as follows:

1. Multiply an amount equal to 2 per cent of the average salary of the person by the number of years, not exceeding thirty-five, for which the person has credit in the Fund.

2. Where the person has contributed to the *Canada Pension Plan*, reduce the amount computed under paragraph 1 by an amount equal to 0.7 per cent of that part of the average salary of the person that does not exceed the Year's Maximum Pensionable Earnings Average of the person multiplied by the number of years, not exceeding thirty-five, for which the person has credit in the Fund after the year 1965. R.S.C. 1970, c. C-5

3. Where the person ceased to be employed in education before attaining the age at which the person could become eligible for a benefit under the *Canada Pension Plan* or commences to receive a disability pension under the *Canada Pension Plan*, the reduction under paragraph 2 does not apply until the first day of the month next following the month in which the person attains such age or commences to receive the disability pension. R.S.O. 1980, c. 494, s. 33.

Disability allowance to person incapable of further employment in education

18.—(1) Every person who,

(a) has credit in the Fund for ten or more years;

(b) while employed in education becomes mentally or physically incapacitated to a degree that in the opinion of the Commission renders the person incapable of being further employed in education;

(c) ceases to be employed in education before the end of the school year in which the person would attain the age of sixty-five years; and

(d) makes application within two years from the date upon which the person was last employed in education,

is entitled, subject to section 25, to an annual disability allowance during the person's lifetime.

Computation of allowance

(2) The amount of the annual disability allowance to which a person is entitled under this section shall be computed as follows:

1. Multiply an amount equal to 2 per cent of the average salary of the person by the number of years, not exceeding thirty-five, for which the person has credit in the Fund.

R.S.C. 1970, c. C-5

2. Where the person has contributed to the *Canada Pension Plan*, reduce the amount computed under paragraph 1 by an amount equal to 0.7 per cent of that part of the average salary of the person that does not exceed the Year's Maximum Pensionable Earnings Average of the person multiplied by the number of years, not exceeding thirty-five, for which the person has credit in the Fund after the year 1965.

3. Where the person ceased to be employed in education before attaining the age at which the person could become eligible for a benefit under the *Canada Pension Plan* or commences to receive a disability pension under the *Canada Pension Plan*, the reduction under paragraph 2 does not apply until the first day of the month next following the month in which the person attains such age or commences to receive the disability pension.

4. Reduce the amount computed under paragraphs 1 to 3 at the rate of 2½ per cent times the lesser of,

   i. the number of years by which the person's age is less than sixty-five years on the date on which the allowance is to commence, or

   ii. ninety minus the sum of the number of years for which the person has credit in the Fund and the person's age on the date on which the allowance is to commence,

to a maximum reduction of 25 per cent under this paragraph. R.S.O. 1980, c. 494, s. 34.

Change of disability status for purpose of survivor allowance

19. Where a person receiving an annual disability allowance under this Act related to incapability of being employed in education dies leaving a spouse or a child surviving, and provision was made for a special medical re-examination and no decision was made by the Commission on such re-examination before the person's death, the Commission may, if it is of the opinion having regard to the facts established at the date of the person's death that the person should have been receiving an annual disability allowance under this Act related to incapability of further earning a livelihood, recompute the disability allowance in accordance with this Act as of the date of death as a disability allowance under this Act related to incapability of further earning a livelihood for the purpose of the survivor allowance under this Act. R.S.O. 1980, c. 494, s. 37.

Proof of disability

20. No application for a disability allowance under this Act shall be considered by the Commission until the Commission has obtained,

(a) the certificate of a legally qualified medical practitioner designated by the Commission, certifying that while employed in education the applicant became mentally or physically incapacitated and indicating the nature and degree of the incapacitation; and

(b) the report of the medical referee of the Commission containing such recommendations as the medical referee considers proper with regard to the granting of an allowance to the applicant. R.S.O. 1980, c. 494, s. 41.

Commencement of disability allowance

21.—(1) A disability allowance under this Act shall commence as of the first day of the month next following the month in which the person entitled to the allowance ceases to be employed in education.

Idem

(2) Notwithstanding subsection (1), a disability allowance under this Act shall not commence as of a date earlier than one year before the date upon which the completed application for the allowance reaches the Commission. R.S.O. 1980, c. 494, s. 43 (1).

Effect of re-employment

22. A person who is receiving a disability allowance under section 17 and who becomes employed ceases to be entitled to the disability allowance. R.S.O. 1980, c. 494, s. 46 (2).

Effect of re-employment in education

23. A person who is receiving a disability allowance under section 18 and who becomes employed in education or employed as a teacher in a school or institution ceases to be entitled to the disability allowance until the person ceases to be so employed. R.S.O. 1980, c. 494, s. 46 (3).

Resumption of disability allowance

24.—(1) Where a person ceases to receive a disability allowance under this Act because of re-employment in education and the re-employment in education is for less than two years, the person is entitled upon the cessation of the re-employment to the resumption of the disability allowance without adjustment of the amount of the disability allowance.

Application for allowance

(2) Where the re-employment in education is for two or more years, the person is entitled upon the cessation of the re-employment to apply for an allowance under this Act. R.S.O. 1980, c. 494, s. 48.

Evidence of mental or physical condition

25.—(1) The Commission may at any time require a person who is receiving a disability allowance under this Act to furnish evidence, in such form as the Commission directs, of the person's mental or physical condition.

Failure to furnish evidence

(2) Where the person fails to furnish evidence that the person's mental or physical condition continues to be of a nature that entitles the person to receive the disability allowance, the Commission may terminate payment of the disability allowance.

Review by Commission

(3) Where the disability allowance was an allowance under section 17, the person may request the Commission to review the matter and the Commission shall make the review and may direct payment to the person of such disability allowance as the person is entitled to under this Act. R.S.O. 1980, c. 494, s. 49.

SURVIVOR ALLOWANCES

Survivor allowance to spouse of person receiving allowance

26.—(1) The spouse of a person who dies while receiving an allowance under this Act is entitled to an annual survivor allowance during the spouse's lifetime.

Amount of survivor allowance

(2) The amount of the annual survivor allowance under this section is,

(a) where the deceased person had attained the age of sixty-five years at the date of death, one-half of the allowance that the deceased person was receiving at the date of death; or

(b) where the deceased person had not attained the age of sixty-five years at the date of death, one-half of the allowance that the deceased person would have received as of the first day of the month next following the month in which the deceased person would have attained the age of sixty-five years.

Exception

(3) Subsections (1) and (2) do not apply to the surviving spouse of a deceased person if they became spouses after the date of the deceased person's last day of employment in education. R.S.O. 1980, c. 494, s. 36 (1, 2), *part*.

Survivor allowance to spouse of person with vested interest in allowance

27.—(1) The spouse of a person who dies with a vested interest in but before receiving an allowance under this Act is entitled to an annual survivor allowance during the spouse's lifetime.

Amount of survivor allowance

(2) The amount of the annual survivor allowance under this section is an amount equal to one-half of the amount computed as follows:

1. Multiply an amount equal to 2 per cent of the average salary of the person by the number of years, not exceeding thirty-five, for which the person has credit in the Fund.

2. Where the person has contributed to the *Canada Pension Plan*, reduce the amount computed under paragraph 1 by an amount equal to 0.7 per cent of that part of the average salary of the person that does not exceed the Year's Maximum Pensionable Earnings Average of the person multiplied by the number of years, not exceeding thirty-five, for which the person has credit in the Fund after the year 1965.

R.S.C. 1970, c. C-5

Exception

(3) Subsections (1) and (2) do not apply to the surviving spouse of a deceased person if they became spouses after the date of the deceased person's last day of employment in education. R.S.O. 1980, c. 494, s. 36 (1, 2), *part*.

Survivor allowance to child upon death of surviving spouse

28.—(1) The child or children of a person,

(a) who dies while receiving or with a vested interest in an allowance under this Act; and

(b) who is survived by a spouse who receives an annual survivor allowance in respect of the person,

are entitled upon the death of the spouse to an annual survivor allowance until the child or the youngest of the children attains the age of eighteen years.

Amount of survivor allowance

(2) The amount of the annual survivor allowance under this section is an amount equal to the amount of the annual survivor allowance to which the spouse of the deceased person was entitled after the death of the deceased person. R.S.O.1980, c. 494, s. 36 (1), *part*.

Survivor allowance to child where no surviving spouse

29.—(1) The child or children of a person,

(a) who dies while receiving an allowance under this Act and who is not survived by a spouse; or

(b) who dies with a vested interest in but is not receiving an allowance under this Act and who is not survived by a spouse,

are entitled to an annual survivor allowance until the child or the youngest of the children attains the age of eighteen years.

Amount of survivor allowance

(2) The amount of the annual survivor allowance under this section is an amount equal to the annual survivor allowance to which the spouse of the deceased person would be entitled under this Act if the deceased person were survived by a spouse. R.S.O. 1980, c. 494, s. 36 (1), *part*.

Increase of survivor allowance

30.—(1) A person employed in education may direct the Commission to increase the amount of the survivor allowance related to the allowance to which the person will be entitled when the person ceases to be employed in education to 55 per cent, 60 per cent, 65 per cent, 70 per cent or 75 per cent of the allowance and to reduce the amount of the allowance accordingly.

Time limit

(2) A direction mentioned in subsection (1) must be in writing and must be delivered to the Commission two years or more before the person ceases to be employed in education.

Exception

(3) The Commission shall accept a direction mentioned in subsection (1) that is delivered to the Commission less than two years before the person ceases to be employed in education but before the person applies for an allowance under this Act, if the Commission is satisfied that the person is in good health having regard to the person's age.

Actuarial reduction of allowance

(4) Where a direction mentioned in subsection (1) is delivered in accordance with subsection (2) or accepted in accordance with subsection (3), the amount of the allowance payable

to the person shall be actuarially reduced by the actuary of the Commission in a manner approved by the Commission to allow for the survivor allowance in accordance with the direction, and the amount of the survivor allowance related to the allowance shall be increased in accordance with the direction.

When direction not valid

(5) A direction mentioned in subsection (1) is not valid if the person who gives the direction dies before applying for an allowance under this Act or before ceasing to be employed in education.

Revocation of direction

(6) A person who gives a direction mentioned in subsection (1) may revoke the direction by a written revocation delivered to the Commission before the date of commencement of the person's allowance. *New*.

Survivor allowance to dependant

31.—(1) A person employed in education who does not have a spouse or a child to qualify for a survivor allowance under this Act may direct the Commission to pay a survivor allowance related to the person's allowance to a dependant named in the direction in an amount equal to 50 per cent, 55 per cent, 60 per cent, 65 per cent, 70 per cent or 75 per cent of the amount of the allowance to which the person will be entitled when the person ceases to be employed in education and to reduce the amount of the allowance accordingly.

Time limit

(2) A direction mentioned in subsection (1) must be in writing and must be delivered to the Commission two years or more before the person ceases to be employed in education.

Exception

(3) The Commission shall accept a direction mentioned in subsection (1) that is delivered to the Commission less than two years before the person ceases to be employed in education but before the person applies for an allowance under this Act, if the Commission is satisfied that the person is in good health having regard to the person's age.

Actuarial reduction of allowance

(4) Where a direction mentioned in subsection (1) is delivered in accordance with subsection (2) or accepted in accordance with subsection (3), the amount of the allowance payable to the person shall be actuarially reduced by the actuary of the Commission in a manner approved by the Commission to allow for the survivor allowance in accordance with the direction, and the survivor allowance shall be paid to the dependant in the percentage specified in the direction.

Where person making direction dies before retirement

(5) Where the person making the direction mentioned in subsection (1) dies before applying for an allowance under this Act or before ceasing to be employed in education, the direc-

tion is void and no survivor allowance is payable under subsection (3).

Revocation of direction

(6) A person who gives a direction mentioned in subsection (1) may revoke the direction by a written revocation delivered to the Commission before applying for an allowance under this Act. R.S.O. 1980, c. 494, s. 38.

Survivor allowance where person receiving allowance becomes a spouse

32.—(1) A person who is receiving or has a vested interest in a superannuation allowance under this Act and who becomes a spouse after ceasing to be employed in education may direct the Commission to pay a survivor allowance related to the person's allowance in the amount of 50 per cent, 55 per cent, 60 per cent, 65 per cent, 70 per cent or 75 per cent of the allowance paid or that would otherwise be payable to the person on the first day of the month next following the month in which the person becomes a spouse.

Time limit

(2) A direction mentioned in subsection (1) must be in writing and must be delivered to the Commission,

(a) within ninety days from the date on which the person becomes a spouse; or

(b) where immediately before the person becomes a spouse there is a child who would be entitled upon the death of the person to receive a survivor allowance under this Act, within ninety days from the date the child ceases to be eligible to receive the survivor allowance.

Exception

(3) The Commission may accept a direction mentioned in subsection (1) that is delivered to the Commission after the end of the period of time mentioned in subsection (2), if the Commission is satisfied that the person making the direction is in good health having regard to the person's age.

Actuarial reduction of allowance

(4) Subject to subsection (5), where a direction mentioned in subsection (1) is delivered in accordance with subsection (2) or is accepted in accordance with subsection (3), the amount of the allowance payable to the person shall be actuarially reduced by the actuary of the Commission in a manner approved by the Commission to allow for the survivor allowance in accordance with the direction, and the survivor allowance shall be paid to the surviving spouse in the percentage specified in the direction.

Interest of child

(5) A survivor allowance under this section does not become payable until there is no person eligible to receive a survivor allowance as a child of the person in receipt of or with a vested

interest in the superannuation allowance to which the survivor allowance relates. *New*.

Interpretation R.S.O. 1980, c. 488

33.—(1) In this section, "court" has the same meaning as in Part V of the *Succession Law Reform Act*.

Where more than one surviving spouse

(2) Where more than one person applies to the Commission for a survivor allowance under this Act as spouse of a deceased person who was receiving or had a vested interest in a superannuation allowance, the court, on application by the Commission, by order may direct payment of the survivor allowance or part thereof to one or more of the applicants for the survivor allowance and may specify the proportion of the survivor allowance that shall be paid to each of them.

Application to court

(3) An application to the court may be made in the same manner as an application under Part V of the *Succession Law Reform Act*.

Consideration on application

(4) Upon the application, the court shall determine the eligibility of the persons for the survivor allowance, and section 62 of the *Succession Law Reform Act* applies with necessary modifications in respect of the allocation of proportions of the survivor allowance and, for the purpose, "dependant" means spouse of the deceased person. *New*.

Commencement of survivor allowance

34.—(1) A survivor allowance that is payable under this Act on the death of a person employed in education shall commence as of the day next following the day the person dies.

Idem

(2) A survivor allowance that is payable under this Act on the death of a person in receipt of an allowance under this Act shall commence as of the first day of the month next following the month in which the person dies. R.S.O. 1980, c. 494, s. 43 (2,3).

ALLOWANCES—GENERAL

Rules for computations re part-time employment in education

35.—(1) For the purpose of computing the entitlements under this Act and the regulations of or related to a person who is employed in education on less than a full-time basis, the following rules apply:

1. The person is entitled to credit for service in the proportion that the person's work period bears to the full-time work period for the occupational group in which the person is employed in education.

2. For the purpose of determining length of service in order to qualify for an entitlement (but not for the purpose of computing the amount of an allowance) service for a part of a year shall be deemed to be service for the whole year.

3. The person's annual salary shall be calculated according to the following:

$$\frac{S}{T} \times F = A$$

where,

S = The person's salary for the year.

T = The person's work period.

F = Full-time work period for the occupational group, as determined by the Commission.

A = Annual salary.

4. The person's average salary shall be calculated using the person's annual salary calculated in accordance with Rule 3 of these rules.

Minimum allowances

(2) No increase in the amount of an allowance to a prescribed minimum amount applies to an allowance of or related to a person who is employed in education on less than a full-time basis and has less than ten years of credit in the Fund.

Exception

(3) Subsection (2) does not apply if allowances of or related to persons mentioned in that subsection have been included in the prescribed minimum amounts before the coming into force of this Act. *New*.

Reciprocal arrangements

36.—(1) A person employed in education is entitled to credit for the period of time that the person was engaged in teaching in another part of Canada or the Commonwealth and in respect of which funds are not transferred or paid to the Fund.

Application of subs. (1)

(2) Subsection (1) applies in respect of those parts of Canada or the Commonwealth prescribed by the regulations.

Purpose of credit

(3) A credit under subsection (1) is for the purpose of determining length of service in order to qualify for an allowance but not for the purpose of computing the amount of the allowance. R.S.O. 1980, c. 494, s. 61.

Payment of allowances

37.—(1) An allowance under this Act is payable in monthly instalments. R.S.O. 1980, c. 494, s. 42.

Idem

(2) An allowance under section 14 may be paid, in the discretion of the Commission, in a lump sum, annually, or in semi-annual, quarterly or monthly instalments. R.S.O. 1980, c. 494, s. 32 (5, 7).

Application for allowance

38. An allowance under this Act shall be paid only after the receipt by the Commission of an application in the form that shall be provided by the Commission. R.S.O. 1980, c. 494, s. 40.

Termination of allowance

39. Every allowance under this Act terminates as of the end of the month in which the event that terminates the allowance occurs. R.S.O. 1980, c. 494, s. 44.

Report re employment in education

40.—(1) At the request of the Commission, a person in receipt of a superannuation allowance or a disability allowance under this Act shall report to the Commission the number of days that the person was employed in education while in receipt of the allowance.

Where report not given

(2) Where the report is not given to the Commission within a reasonable time after the request, the Commission may direct that no further allowance under this Act be paid to the person until the report is given to the Commission. R.S.O. 1980, c. 494, s. 19 (3).

Multiple allowances

41. No person is entitled to payment of two superannuation allowances or both a superannuation allowance and a disability allowance under this Act during the same month or other payment period. *New*.

Notice of re-employment by person receiving allowance

42.—(1) A person who is receiving a superannuation allowance under this Act and who becomes employed in education shall give notice in writing of the employment forthwith to the Commission.

Notice of re-employment by person receiving disability allowance

(2) A person who is receiving a disability allowance under section 17 and who becomes employed shall give notice in writing of the employment forthwith to the Commission.

Idem

(3) A person who is receiving a disability allowance under section 18 and who becomes employed in education or employed as a teacher in a school or institution shall give notice in writing of the employment forthwith to the Commission.

Failure to give notice

(4) A person mentioned in subsection (1), (2) or (3) who fails to give the notice required by the subsection is not entitled to a benefit under this Act unless the Commission otherwise directs. R.S.O. 1980, c. 494, s. 45.

Seizure of allowance

43.—(1) The interest of a person in the Fund and in an allowance under this Act is not subject to garnishment, attachment, seizure or other process of law and is not assignable. R.S.O. 1980, c. 494, s. 51.

Application of subs. (1)

(2) Notwithstanding subsection (1), payment of an allowance is subject to execution, seizure or attachment in satisfaction of an order for support or maintenance enforceable in Ontario.

Notice of enforcement

(3) Subsection (2) applies only where the person receiving payment is given ten days notice, or such greater notice as is otherwise required by law in Ontario, as to the enforcement of the order. *New*.

REFUNDS

Refund before 45 years of age

44.—(1) A person who ceases to be employed in education before attaining forty-five years of age is entitled to a refund of an amount equal to the whole of the person's contributions to the Fund with interest on each amount contributed for the period of time it was in the Fund at the rate of 3 per cent per year compounded half-yearly.

Less than ten years service

(2) A person who has credit in the Fund for less than ten years of service and ceases to be employed in education is entitled to a refund of an amount equal to the whole of the person's contributions to the Fund with interest on each amount contributed for the period of time it was in the Fund at the rate of 3 per cent per year compounded half-yearly.

Application of subs. (2)

(3) Subsection (2) does not apply if the person is entitled to an annual superannuation allowance under this Act.

Idem

(4) A person who has credit in the Fund for ten or more years of service and who has ceased to be employed in education after attaining forty-five years of age is entitled to a refund of an amount equal to the whole of the person's contributions to the Fund in respect of service before the 1st day of January, 1965, with interest on each amount contributed for the period of time it was in the Fund at the rate of 3 per cent per year compounded half-yearly.

Less than ten years service at age 65

(5) A person who has credit in the Fund for less than ten years of service and who ceases to be employed in education in

the calendar year in which the person attains or would attain sixty-five years of age or in a later calendar year, is entitled to a refund of an amount equal to twice the amount of the person's contributions to the Fund with interest thereon calculated in accordance with subsection (6).

Interest computation

(6) Interest under subsection (5) shall be computed and credited to the person as at the 31st day of December in each year at the Fund rate for the year on the contribution credited to the person for the year and on the accumulated balance of contributions at the end of the preceding year.

Effect of taking refund

(7) A refund under subsection (1), (2), (4) or (5) is in lieu of an allowance under this Act and taking the refund terminates entitlement to a superannuation allowance, a disability allowance and a survivor allowance, or any of them, in respect of the contributions to which the refund is related.

Time of payment of refund

(8) No refund under subsection (1), (2), (4) or (5) shall be made until three months after the day upon which the person ceased to be employed in education. R.S.O. 1980, c. 494, s. 53.

Manner of payment of refund

(9) A refund shall be paid in a lump sum or, at the written request of the person entitled to the refund, in three equal annual instalments without additional interest. R.S.O. 1980, c. 494, s. 52 (2).

Repayment of refund on re-employment in education

45.—(1) A person who has taken a refund of contributions from the Fund and who subsequently is employed in education for twenty or more days in a school year and desires to be reinstated in the Fund in respect of the former period of employment in education is entitled to be so reinstated upon paying to the Fund an amount equal to the total of the refund previously taken and the interest thereon, if any, paid at the time of the refund together with interest on the total at the debenture rate for the fiscal year at the date of payment of the refund for the period from the date of payment of the refund to and including the date of repayment to the Fund or, where the repayment to the Fund is made in instalments, to and including the date of payment of the first instalment to the Fund and on the balance at the debenture rate for the fiscal year at the date of payment of the first instalment from such date to and including the date of payment of the balance.

Debenture rate

(2) Where the debenture rate mentioned in subsection (1) is less than the rate specified in section 68, the debenture rate shall be deemed to be the rate specified in section 68.

Where part of refund not repaid

(3) A superannuation allowance or disability allowance to which a person mentioned in subsection (1) may become entitled under this Act during the period of repayment shall be reduced actuarially during the person's lifetime by the amount of the refund and interest that is not repaid.

Eligibility for disability allowance

(4) A person who has taken a refund of contributions from the Fund, is subsequently employed in education and elects to be reinstated in the Fund under subsection (1) is not eligible for a disability allowance under this Act until the person has been employed in education for two years after the person's return to employment.

Completion of repayment by survivor

(5) Where a person making payment into the Fund under subsection (1) dies before completing the payment, a person entitled to a survivor allowance related to the allowance to which the deceased person would have been entitled may complete the payment and the survivor allowance shall be calculated and paid in accordance with the full credit of the deceased person in the Fund.

Where payment not completed

(6) A survivor allowance mentioned in subsection (5) shall be reduced actuarially from the full credit obtainable in the Fund under that subsection by the amount of any payment not completed in accordance with that subsection. R.S.O. 1980, c. 494, s. 54.

Return of superannuate to employment

46.—(1) No refund shall be made in respect of contributions to the Fund by a person in receipt of a superannuation allowance under this Act who again becomes employed in education.

Exception

(2) Subsection (1) does not apply to prevent payment to the personal representative of a person mentioned in subsection (1) where no survivor allowance is payable under this Act on the death of the person. R.S.O. 1980, c. 494, s. 55.

Refund to personal representative

47.—(1) The personal representative of a person who was employed in education and has died is entitled to a refund out of the Fund in the circumstances described in subsection (2) and in an amount calculated in accordance with subsection (3).

When refund payable

(2) The circumstances referred to in subsection (1) are,

(a) that no survivor allowance is payable under this Act on the death of the person; or

(b) that all survivor allowances payable under this Act on the death of the person have been fully paid.

Amount of refund

(3) The amount of the refund to the personal representative is an amount equal to,

(a) the amounts contributed to the Fund by the person; and

(b) interest on the amounts contributed to the Fund by the person to the end of the month in which the person died or the last survivor allowance was payable, whichever is later, calculated in accordance with subsection (4),

reduced by an amount equal to,

(c) the amount of the allowance, if any, paid under this Act to the person;

(d) the amount of the survivor allowances, if any, paid under this Act consequent upon the death of the person; and

(e) interest on the amounts of the allowance and survivor allowances to the end of the month in which the person died or the last survivor allowance was payable, whichever is later, calculated in accordance with subsection (5).

Interest calculation

(4) Interest under subsection (3) shall be computed and credited to the person as at the 31st day of December in each year at the Fund rate for the year of contributions credited to the person for the year and on the accumulated balance of contributions at the end of the preceding year.

Idem

(5) Interest under subsection (3) on the amounts of the allowances paid to the person or consequent upon the death of the person shall be calculated as at the 31st day of December in each year at the Fund rate for the year on the accumulated balance of payments for the year and on the accumulated balance of payments at the end of the preceding year. R.S.O. 1980, c. 494, ss. 56, 57, 59.

TRANSFERS

Reinstatement for purpose of transfer of credits

48. A person who has taken a refund of contributions from the Fund and who becomes, in respect of a period of twenty or more days in a school year, a contributor to a pension plan in respect of which there is a reciprocal agreement in force under this Act that permits service under this Act to be taken into account for the purposes of the calculation of a benefit upon the transfer of funds from the Fund may be rein-

stated in the Fund without being employed in education upon payment into the Fund of the amount required under section 46, but the reinstatement shall be for the purpose only of a transfer of credits under the reciprocal agreement. *New*.

Transfer agreements

49. Subject to the approval of the Lieutenant Governor in Council, the Commission may enter into agreements with the authorized representatives of any other pension fund respecting the terms and conditions upon which persons may transfer to or from the Fund from or to the other pension fund. R.S.O. 1980, c. 494, s. 62.

SUPERANNUATION ADJUSTMENT BENEFITS

Superannuation Adjustment Fund R.S.O. 1980, c. 490

50.—(1) The employer of a person employed in education shall deduct the person's contributions under the *Superannuation Adjustment Benefits Act* from the person's salary and shall deliver to the Commission or deposit in the Commission bank account the employee's contributions under that Act at the same times as the employer is required to deliver or deposit amounts deducted as contributions to the Fund.

Interest

(2) Interest is payable by the employer to the Commission on each contribution due under subsection (1) from the date the contribution is due to the date the contribution is delivered or deposited in accordance with subsection (1).

Interest rate

(3) The rate at which the interest is payable is the same as the rate payable on contributions to the Fund that are delivered or deposited after the date on which the contributions are due. R.S.O. 1980, c. 494, s. 25 (7).

Contributions by Ontario to Superannuation Adjustment Fund

51.—(1) For the purpose of contributing the amount required by clause 8 (1) (b) of the *Superannuation Adjustment Benefits Act*, within the month following the month in which employees' contributions are delivered to the Commission or deposited in the Commission bank account there shall be transferred to the account maintained in relation to this Act under the Superannuation Adjustment Fund Account out of the Consolidated Revenue Fund an amount equal to the employees' contributions to the Superannuation Adjustment Fund received in the month by the Commission.

Exceptions

(2) Subsection (1) does not apply in respect of contributions by persons employed in education within the meaning of subclause 1 (1) (j) (v), (vi) or (ix). *New*.

Payment of superannuation adjustment benefits

52.—(1) The Commission shall pay to the persons entitled thereto the superannuation adjustment benefits payable under the *Superannuation Adjustment Benefits Act* related to this Act.

Source of moneys

(2) The Commission shall make the payments under subsection (1) out of the moneys paid to the Commission under section 50.

Additional moneys

(3) Where the moneys mentioned in subsection (2) are insufficient to enable the Commission to make the payments under subsection (1), the Commission shall certify to the Treasurer the amount required to make the payments and the Treasurer shall transfer the amount to the Commission out of the credit balance in the account maintained in relation to this Act under the Superannuation Adjustment Fund Account.

Surplus funds

(4) Not later than the end of each month, the Commission shall transfer to the Treasurer for the account maintained in relation to this Act under the Superannuation Adjustment Fund Account any funds received by the Commission during the preceding month as contributions under the *Superannuation Adjustment Benefits Act*, or as interest on such contributions, that are surplus to the requirements of the Commission in relation to the payment of benefits under that Act.

R.S.O. 1980, c. 490

Purpose of subss. (1-4)

(5) The purpose of subsections (1) to (4) is to provide for the administration of the *Superannuation Adjustment Benefits Act* in relation to persons employed in education and persons entitled to allowances under this Act. *New.*

Determination as to employment

53. For the purposes of section 6 of the *Superannuation Adjustment Benefits Act*, a person's employment in education in a school year, for less than the number of days prescribed by the regulations, after the person ceases to be employed in education and before the person commences to receive a superannuation allowance under this Act shall not be taken into account in determining the year in which the person ceases to be employed in education. *New.*

Accounts as to superannuation adjustments

54.—(1) The Commission shall maintain accounts in which shall be entered all receipts and disbursements by the Commission in respect of the *Superannuation Adjustment Benefits Act*.

Audit of accounts

(2) The accounts mentioned in subsection (1) shall be audited by the Provincial Auditor or by such other auditor as the Lieutenant Governor in Council appoints.

Report

(3) The auditor shall make an annual report, and shall prepare and furnish to the Treasurer such statements and reports as are required by the Treasurer. *New.*

TEACHERS' SUPERANNUATION COMMISSION

Commission

55.—(1) The Teachers' Superannuation Commission is continued.

Composition

(2) The Commission shall be composed of,

(a) five persons who shall be appointed by the Minister; and

(b) five persons employed in education each elected by the members of one of the teacher organizations prescribed by the regulations who are contributors to the Fund.

Election of members

(3) The elections mentioned in clause (2) (b) shall be conducted by secret ballot and in accordance with such procedures as are determined by The Ontario Teachers' Federation.

Chairman, transitional

(4) The person holding the office of chairman of the Commission on the day this Act comes into force shall continue to hold office until the end of the year in which this Act comes into force and until his successor is elected.

Election of chairman by elected members

(5) In the year next following the year in which this Act comes into force and in every second year thereafter, the members of the Commission mentioned in clause (2) (b) shall elect from among them a person who shall be the chairman of the Commission for the year and until the person's successor as chairman is elected.

Election of chairman by appointed members

(6) In the second year following the year in which this Act comes into force and in every second year thereafter, the members of the Commission mentioned in clause (2) (a) shall elect from among them a person who shall be the chairman of the Commission for the year and until the person's successor as chairman is elected.

Vacancy in office of chairman

(7) If in any year a vacancy occurs in the office of chairman of the Commission, the members of the Commission whose duty it was to elect a chairman for the year shall elect from among them a person who shall be the chairman of the Commission for the remainder of the year and until the person's successor as chairman is elected.

Where members fail to elect chairman

(8) If in any year the members of the Commission fail to elect the chairman, the Minister shall appoint the chairman from among the members eligible for election as chairman in the year.

Vacancy among members

(9) When a vacancy occurs among the members, another member shall be appointed by the Minister or by the governing body of the teachers' organization concerned, as the case may be, as soon as is practicable after the vacancy occurs, and the person so appointed shall hold office for the unexpired portion of the term of the member replaced.

Reappointment or re-election

(10) Each member is eligible for reappointment or re-election, as the case may be.

Term of office

(11) Each member shall hold office for three years and until a successor is appointed or elected.

Meetings

(12) The Commission shall meet in the offices of the Commission at such times as the Commission may determine.

Quorum

(13) Seven members constitute a quorum. R.S.O. 1980, c. 494, s. 2.

Voting

(14) Each member of the Commission, including the chairman, is entitled to vote on a matter before the Commission, and where the number of votes in favour of a motion before the Commission and the number of votes against the motion are equal, the motion is defeated.

Liability

(15) No action or other proceeding for damages shall be commenced or continued against an employee of the Commission for an act or omission in good faith in the course of employment or against a member of the Commission for an act done in good faith in the execution or intended execution of a power or duty under this Act or the regulations or for an alleged neglect or default in the execution of such a power or duty. *New*.

Property

56.—(1) Subject to the approval of the Lieutenant Governor in Council, the Commission may,

(a) in its own name acquire by purchase, lease, or otherwise and hold any real property or any interest therein necessary for its actual use and occupation; and

(b) when no longer so necessary, sell or otherwise dispose of any of such property and pay the proceeds thereof into the Fund.

Expenditures re property

(2) Any expenditure incurred by the Commission in connection with any property acquired under subsection (1) shall be deemed to be an administration expense.

Rights re property

(3) The Commission may in its own name contract and be contracted with and sue and be sued.

Crown agency for purposes of R.S.O.1980, c. 106

(4) The Commission shall be deemed to be a Crown agency to which the *Crown Agency Act* applies for the purposes of the *Construction Lien Act, 1983*. R.S.O. 1980, c. 494, s. 3.

1983, c. 6

Documents

57. Where any document is required to be executed by the Commission, it is sufficient if the document is signed in the name of the Commission by any two of,

(a) the chairman of the Commission;

(b) a member of the Commission designated by the Commission for the purpose;

(c) the director of the Commission. R.S.O. 1980, c. 494, s. 4.

Explanations to contributors R.S.O. 1980, c. 373

58. The Commission shall continue to provide to each contributor to the Fund the explanations required to be provided to contributors to the Fund by the *Pension Benefits Act*. R.S.O. 1980, c. 494, s. 5.

Duty of Commission

59. It is the duty of the Commission to manage the affairs of the Commission, to administer this Act and to advise the Minister on matters related to the affairs of the Commission or the administration of this Act. R.S.O. 1980, c. 494, s. 6.

Staff

60.—(1) Subject to the approval of the Lieutenant Governor in Council, the Commission may,

(a) establish job classifications, salary ranges, and the terms and conditions of employment for its employees; and

(b) appoint a director, an actuary, a solicitor, a medical referee, and such other employees as are considered proper.

Salaries

(2) The employees of the Commission shall be paid out of the Fund.

Application of R.S.O.1980, c. 419

(3) The *Public Service Superannuation Act* applies to the employees of the Commission as though the Commission had been designated by the Lieutenant Governor in Council under section 28 of that Act. R.S.O. 1980, c. 494, s. 7.

Actuary

61. The Commission shall not appoint a person as the actuary of the Commission unless the person is a Fellow of the Canadian Institute of Actuaries. R.S.O. 1980, c. 494, s. 1 (1) (a).

Fiscal year of Commission

62. The period from and including the 1st day of January to and including the 31st day of December constitutes the fiscal year of the Commission. R.S.O. 1980, c. 494, s. 14.

Annual report

63.—(1) The Commission shall annually, after the end of its fiscal year, file with the Minister a report upon the affairs and finances of the Commission.

Idem

(2) The Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. R.S.O. 1980, c. 494, s. 17.

TEACHERS' SUPERANNUATION FUND

Fund

64.—(1) The Teachers' Superannuation Fund is continued.

Custodian

(2) The Treasurer is the custodian of the Fund.

Actuarial valuations

R.S.O. 1980, c. 373

(3) The actuary of the Commission shall make an actuarial valuation of the Fund as of the end of each third year in accordance with the *Pension Benefits Act* and the regulations under that Act and, when directed to do so by the Minister, at any other time. R.S.O. 1980, c. 494, s. 8.

Gifts to Fund

65. The Commission may receive any gift, devise, or bequest made to or for the purposes of the Fund and shall pay it or the proceeds thereof into the Fund to be applied as directed by the donor, and, if so directed, in additional benefits to those provided by this Act or, in the absence of such a direction, to the general purposes of the Fund. R.S.O. 1980, c. 494, s. 9.

Securities

66.—(1) All securities belonging to the Fund shall be deposited with the Treasurer.

Safekeeping of securities

(2) The Treasurer is responsible for the safekeeping of all securities deposited under subsection (1). R.S.O. 1980, c. 494, s. 11.

Accounts

67. Accounts shall be kept in which shall be entered all assets and liabilities and payments into and disbursements out of the Fund. R.S.O. 1980, c. 494, s. 13.

Interest

68. Except where otherwise specifically provided by this Act,

(a) interest payable under this Act or the regulations shall be at the rate of 6 per cent per year, compounded half-yearly; and

(b) interest is payable on any payment into or out of the Fund, other than an allowance, that is thirty days or more in arrears. R.S.O. 1980, c. 494, s. 15.

Audit

69.—(1) The accounts of the Fund shall be audited and the securities in which the moneys of the Fund may be invested shall be examined and checked in each fiscal year of the Commission by the Provincial Auditor or by such other auditor as the Lieutenant Governor in Council appoints, and the auditor shall make an annual report, and shall prepare and furnish to the Treasurer such statements and reports as are required by the Treasurer.

Cost of audit

(2) The cost of the audits and reports shall be paid by the Commission out of the Fund. R.S.O. 1980, c. 494, s. 16.

Payments into Fund

70. An account shall be kept in a chartered bank of Canada in the name of the Treasurer as custodian of the Fund, and every amount received as a payment into the Fund shall be deposited to the credit of such account. R.S.O. 1980, c. 494, s. 18.

Payments out of Fund

71.—(1) Every allowance, every refund, and the expenses of the administration of this Act, are payable out of the Fund.

Method of payment

(2) Every payment out of the Fund shall be made,

(a) by cheque of the Commission signed by; or

(b) by a direct transfer into the payee's account in a chartered bank or other institution entitled to receive money on deposit, pursuant to an arrangement authorized by the signatures of,

any two of, the chairman of the Commission, a member of the Commission designated by the Commission for the purpose, or the director of the Commission, and any such signature may be affixed in facsimile by use of a rubber stamp or by printing, lithographing, engraving or other means. R.S.O. 1980, c. 494, s. 19 (1,2).

Province of Ontario debentures

72.—(1) The Treasurer shall issue from time to time a Province of Ontario debenture for the amount of funds accu-

mulated to the credit of the Fund and not required for current expenditures.

Treasurer to determine rate and term

(2) The Treasurer, in consultation with the Commission and subject to the approval of the Lieutenant Governor in Council, shall determine in accordance with subsections (3) and (4) the rate and term of a debenture issued under subsection (1).

Rate

(3) A debenture issued under subsection (1) shall bear interest payable half-yearly at a rate based on the Canadian secondary market when the debenture is issued for Ontario securities, securities guaranteed by Ontario with a corresponding term or other similar securities.

Term

(4) The term of a debenture issued under subsection (1) shall be not less than twenty years and not more than twenty-five years.

Charge on Consolidated Revenue Fund

(5) A debenture issued under subsection (1) is a charge upon the Consolidated Revenue Fund. R.S.O. 1980, c. 494, s. 10.

Bank loans

73.—(1) The Treasurer, as custodian of the Fund, may, at the request of the Minister, arrange for a chartered bank of Canada to advance to the Fund, by way of overdraft or otherwise, any amount required temporarily to provide for payments out of the Fund and may furnish securities of the Commission as security therefor, and every such advance shall be repaid within one year out of interest or contributions to the Fund, or both.

Short-term investments

(2) The Treasurer, as custodian of the Fund, may at the request of the Minister, when both the Treasurer and the Minister consider it advisable for the sound and efficient management of the Fund, invest and authorize the Commission to invest any part of the Fund for any period not exceeding twelve months in any securities in which the Treasurer may invest the public moneys of Ontario. R.S.O. 1980, c. 494, s. 20.

Payment of share of unfunded liability

74.—(1) Every designated organization or designated private school shall deliver to the Commission or deposit in the Commission bank account on or before the 31st day of December in each year an amount equal to the part of the increase in the unfunded liability of the Fund over the unfunded liability base that is attributable to the designated private school or designated organization.

Interest

(2) Interest is payable by every designated organization or designated private school to the Commission on the amount payable under subsection (1) from the date the amount is due

to the date the amount is delivered to the Commission or deposited in the Commission bank account.

Rate of interest

(3) The rate at which the interest is payable is the Bank of Canada rate in effect on the date the amount is due under subsection (1) plus 4 per cent. *New*.

GENERAL

Regulations

75.—(1) The Lieutenant Governor in Council may make regulations,

(a) prescribing any matter required or authorized by this Act to be, or referred to in this Act as, prescribed by the regulations;

(b) prescribing forms and providing for their use;

(c) prescribing the powers and duties of the officers of the Commission, or any of them;

(d) prescribing the form and manner in which and by whom the accounts and records of the Commission shall be kept;

(e) authorizing the Commission to require persons who are contributors to the Fund or persons who are receiving allowances under this Act, and boards, to furnish information to or for the use of the Commission and prescribing the form thereof;

(f) respecting the administration of moneys held by the Commission for the Superannuation Adjustment Fund under the *Superannuation Adjustment Benefits Act*, including provision for administration fees to the Commission, audits, payments, transfers and temporary draws on the Fund;

R.S.O. 1980, c. 490

(g) authorizing the Commission to enter into agreements with boards, designated organizations and designated private schools respecting the administration of supplementary benefit plans provided by the boards, designated organizations and designated private schools for their employees;

(h) prescribing the method of calculating the part of the increase in the unfunded liability of the Fund over the unfunded liability base that is attributable to each designated organization or designated private school;

(i) providing for and regulating the granting of credit in the Fund upon payment of contributions to the Fund by or on behalf of persons employed in education in respect of absence from duty,

(i) because of ill health,

(ii) because of pregnancy or the adoption of a child,

(iii) because of duties as jurors,

(iv) because of duties as members of the Legislative Assembly of Ontario, of the House of Commons of Canada, of the council of a municipality or of a local board as defined in the *Municipal Affairs Act*, R.S.O. 1980, c. 303

(v) in order to take a course of study approved by the Commission,

(vi) for a period of leave authorized by the employing board,

(vii) in order to travel for a purpose approved by the Commission, or

(viii) because of participation in a position-sharing scheme approved by the employer;

(j) providing for and regulating the granting of credit in the Fund upon payment of contributions to the Fund in respect of hiatuses in employment in education,

(i) because of ill health,

(ii) because of pregnancy or the adoption of a child,

(iii) because of duties as members of the Legislative Assembly of Ontario, of the House of Commons of Canada, of the council of a municipality or of a local board as defined in the *Municipal Affairs Act*,

(iv) in order to take a course of study approved by the Commission, or

(v) in order to travel for a purpose approved by the Commission;

(k) providing for and regulating the granting of credit in the Fund to a person employed in education or who was employed in education for prior or subsequent teaching or supervisory services performed in a part of Canada or the Commonwealth other than Ontario or in a school maintained by the Government of Canada for children of members of the Canadian Forces, for Indians or for inmates of penal institutions, prescribing the period of time or the method of determining the period of time for which the credit may be given, prescribing the amount or the method of determining the amount of the credit, limiting the purpose for which the credit may be used and prescribing the method of calculating the payment that must be made and the terms of payment to the Fund in order to obtain the credit;

(l) providing for and regulating the granting of credit in the Fund to a person employed in education in respect of prior employment in business or industry related to the employment in education, prescribing the period of time or the method of determining the period of time for which the credit may be given, prescribing the amount or the method of determining the amount of the credit, prescribing the method of calculating the payment that must be made and the terms of payment to the Fund in order to obtain the credit and defining "prior employment in business or industry" for the purpose;

(m) respecting the transfer of moneys to or from the Fund from or to another pension fund under an agreement approved by the Lieutenant Governor in Council under this Act, including the credits or the methods of calculating credits in the Fund and the additional contributions that may be made to the Fund in relation to such transfers;

(n) providing for and regulating the granting of credit in the Fund for periods of teaching or supervisory service performed, with the approval of the Minister of Education, in a jurisdiction other than Ontario, and prescribing conditions in respect of the giving of such credit, prescribing the amount or the method of calculating the amount of the credit and prescribing the method of calculating the payment that must be made and the terms of payment to the Fund in order to obtain the credit;

(o) prescribing the method of calculating the periods of time for which credits will be given in the Fund to teachers in designated private schools for past teaching service and prescribing the method of calculating the payment that must be made and the terms of payment to the Fund in order to obtain the credit;

(p) prescribing the conditions under which persons in receipt of allowances under this Act may become employed in education and continue to receive allowances under this Act and providing for reductions in the allowances;

(q) defining "active service", providing for credit in the Fund in respect of active service, and prescribing the terms and conditions upon which the credit may be given, the method of calculating the period for which the credit may be given, the method of calculating the amount of the credit and prescribing the method of calculating the payment that must be made and the terms of payment to the Fund in order to obtain the credit;

(r) respecting persons employed in schools whose board or teachers, or both, are reported by the Minister to the Commission as having failed to comply with this Act or the regulations or with an Act or regulation administered by the Ministry of Education including,

(i) the terms and conditions upon which contributions shall be made to the Fund, and

(ii) the credit to be given to such persons in respect of the period of non-compliance;

(s) prescribing the conditions under which a refund may be made to a person who establishes credit in the Fund under the regulations or who pays money into the Fund under the regulations for the purpose of establishing credit, and prescribing the method of determining the amount of the refund. R.S.O.1980, c. 494, s. 63.

Transitional

(2) A regulation made under clause (1) (i) or (l) may authorize the granting of credit in the Fund in respect of absence from duty because of participation in a position-sharing scheme approved by the employer or in respect of prior employment in business or industry related to employment in education by persons who ceased to be employed in education on or after the

31st day of May, 1982 and before the 1st day of September, 1984. *New.*

Where employment ceased before May 31st, 1982

76.—(1) Except as provided in subsection (2), the *Teachers' Superannuation Act*, being chapter 494 of the Revised Statutes of Ontario, 1980, continues to apply in respect of allowances related to persons who ceased to be employed within the meaning of that Act before the 1st day of September, 1984.

Transitional

(2) Instalments payable on or after the 1st day of September, 1984 for allowances payable to persons who ceased to be employed in education on or after the 31st day of May, 1982 and before the 1st day of September, 1984 shall be computed and paid in amounts equal to the amounts that would have been paid if this Act had come into force on the 31st day of May, 1982. *New.*

Recommencement of allowance to widow or widower

77.—(1) A person whose allowance under section 36 of the *Teachers' Superannuation Act*, being chapter 494 of the Revised Statutes of Ontario, 1980, as the widow or widower of an individual who died with credit in the Fund for ten or more years of service or while in receipt of an allowance under that Act, was terminated by the person's remarriage before the coming into force of this Act, is entitled, upon making an application signed by the person, to have the allowance recommence as of the first day of the month next following the month in which this Act comes into force.

Computation

(2) An allowance mentioned in subsection (1) shall be recommenced in an amount equal to the amount that would have been paid to the person on the first day of the month next following the month in which this Act comes into force if the allowance had not been terminated by the person's remarriage.

Continuation of allowance to child or children

(3) Where an allowance became payable under section 36 of the said Act to the child or children of an individual mentioned in subsection (1) upon the remarriage of the widow or widower of the individual before the coming into force of this Act, the child or children continue to be entitled to the allowance in the same manner as if this Act had not come into force and notwithstanding the recommencement of the allowance to the widow or widower of the individual. *New.*

Repeal

78.—(1) Section 10 of the *Teachers' Superannuation Act*, being chapter 494 of the Revised Statutes of Ontario, 1980, is repealed on the 1st day of April, 1984.

Idem

(2) The said *Teachers' Superannuation Act*, other than section 10, is repealed on the 1st day of September, 1984.

Commencement

79.—(1) This Act, except sections 1 to 52 and 54 to 76, comes into force on the day it receives Royal Assent.

Idem

(2) Section 72 comes into force on the 1st day of April, 1984.

Idem

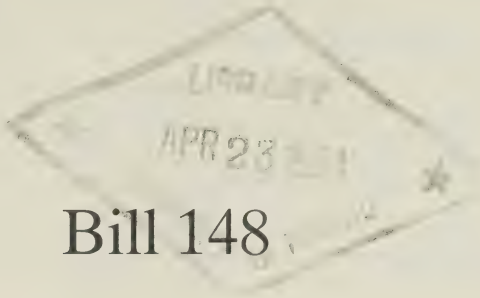
(3) Sections 1 to 52, 54 to 71 and 73 to 76 come into force on the 1st day of September, 1984.

Short title

80. The short title of this Act is the *Teachers' Superannuation Act, 1983*.

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Publicatio

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983



Bill 148

An Act to revise the Teachers' Superannuation Act

The Hon. B. Stephenson
Minister of Education and Minister of Colleges and Universities

1st Reading December 8th, 1983
2nd Reading December 14th, 1983
3rd Reading
Royal Assent

(Reprinted as amended by the Committee of the Whole House)

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTES

The Bill revises the *Teachers' Superannuation Act* and makes a number of changes. The main changes are as follows:

1. The contribution rates are changed from 4.2 per cent and 6 per cent to 5.1 per cent and 6.9 per cent of salary.

2. The Act now requires boards to forward deducted contributions to the Commission on or before the 15th day of the next month. The Bill requires the transfer of these deducted amounts on or before the last day of the month in which the salary is paid. The Bill also provides that overdue transfers will bear interest at a rate equal to the Bank of Canada rate plus 4 per cent.

3. Allowances under the Act will now be computed on the basis of the average salary for the five years, rather than seven years, during which the person's salary was highest.

4. The *Canada Pension Plan* offset, instead of being computed on the basis of the year's maximum pensionable earnings under the *Canada Pension Plan* at the time the person ceased to be employed, will now be computed on the basis of the average of the Year's Maximum Pensionable Earnings under the *Canada Pension Plan* of the year in which the person ceased to be employed in education and each of the two preceding years.

5. The Bill provides for superannuation allowances in the following circumstances:

    i. Where a person has credit in the Fund for a number of years of service that, when added to the person's age on the date when the person ceases to be employed in education, totals at least ninety years.

    ii. Where a person has credit in the Fund for ten or more years of service, ceases to be employed in education, and does not qualify under subparagraph i.

    iii. Where a person ceases to be employed in education after attaining forty-five years of age and has credit in the Fund for less than ten years of service but has been in the service of the person's last employer for a continuous period of ten years.

6. The provision, in section 36 of the Act, that a dependant's allowance paid to a widow or widower is discontinued on the remarriage of the widow or widower, is not carried forward in the Bill. A surviving spouse who remarries will continue to be entitled to a survivor allowance.

7. For the purposes of the survivor allowance, the term "widow or widower" is replaced by the term "spouse" and this term is given the extended meaning it has in Part II of the *Family Law Reform Act,* which is as follows:

(b) "spouse" means a spouse as defined in section 1, and in addition includes,

(i) either of a man and woman not being married to each other who have cohabited,

(A) continuously for a period of not less than five years, or

(B) in a relationship of some permanence where there is a child born of whom they are the natural parents,

and have so cohabited within the preceding year, and

(ii) either of a man and woman between whom an order for support has been made under this Part or an order for alimony or maintenance has been made before this Part comes into force.

The definition of "spouse" in section 1 of the *Family Law Reform Act* is as follows:

(f) "spouse" means either of a man and woman who,

(i) are married to each other,

(ii) are married to each other by a marriage that is voidable and has not been voided by a judgment of nullity, or

(iii) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or have cohabited within the preceding year.

8. A person who expects to become entitled to an allowance under the Act will be able to direct the Commission to increase the survivor allowance related to the person's allowance to 55 per cent, 60 per cent, 65 per cent, 70 per cent or 75 per cent of the amount of the allowance instead of the usual 50 per cent. The amount of the person's allowance will be actuarially reduced to allow for the increase in the survivor allowance.

9. A person receiving an allowance under the Act who marries after ceasing to be employed in education may direct the Commission to pay a survivor allowance to a dependant and the person's allowance will be actuarially reduced to allow for the survivor allowance.

10. The method of calculating a survivor allowance that is paid to a dependant other than a spouse or child is changed to correspond to the method used where a person who expects to receive an allowance directs the Commission to increase the survivor allowance related to the person's allowance.

11. The provisions of the Act related to contributions on behalf of a person in the event of a long term disability (section 39 of the Act) are expanded to provide for contributions on behalf of a contributor who is qualified for a benefit under a long term income protection plan under the *Public Service Act,* and to provide for additional contributions to the Fund by a person receiving income under an agreement approved by the Commission that does not provide for additional contributions related to the cost of living.

12. The provision (in subsection 46 (1) of the Act) that a superannuation allowance ceases when the person becomes re-employed, is changed so that the person will continue to receive the allowance subject to the conditions and in a reduced amount calculated in the manner prescribed by the regulations, but the person may elect to cease to receive the allowance while employed in education.

13. Specific provisions are added dealing with computations related to entitlements in respect of part-time employment in education.

14. Section 51 of the Act provides that the interest of a person in the Fund or in an allowance under the Act is not subject to garnishment, attachment, seizure or other process of law. The Bill provides an exception in respect of moneys payable in satisfaction of an order for support under the *Family Law Reform Act.* The exception is similar to the exception set out in subsection 27 (2) of the *Pension Benefits Act.*

15. The refund entitlements set out in section 53 of the Act are expanded. Subsection 53 (2) of the Act provides for a refund to a person who was employed in education for at least twenty days in the calendar year in which he attained forty-five years of

age. That provision is expanded so that the employment may be in that year or in any later year. Also, the Bill provides for a refund of twice the amount of the person's contributions with interest at the Fund rate (a defined term), to a person who has less than ten years credit in the Fund and who ceases to be employed in education in or after the calendar year in which the person attains or would attain sixty-five years of age.

16. A person who has taken a refund of contributions may be reinstated in the Fund for the purpose of a transfer of credits to another pension plan. The conditions are that there must be a reciprocal agreement in force under the Act, the person must be a contributor to the other pension plan in respect of twenty or more days in a school year and the person must make the required refund to the Fund.

17. Under sections 56 and 57 of the Act refunds are payable to the personal representatives of contributors to the Fund who die with no survivor allowance becoming payable. The sections provide for refunds out of the Fund with interest to the date of death. This is changed to provide for interest to the end of the month in which the person dies. Also, the sections provide for payment of interest out of the Fund on the amounts refunded at the rate of 3 per cent per year. This is changed to the Fund rate. The term "Fund rate" is defined, in relation to any year, as "the weighted average yield of the debentures held by the Fund as at the 31st day of December in the previous year".

18. The provision, in subsection 25 (7) of the Act, related to the *Superannuation Adjustment Benefits Act* is expanded to set out the role of the Commission in the administration of the Superannuation Adjustment Fund in relation to this pension plan.

19. At present the Teachers' Superannuation Commission is composed of six persons appointed by the Minister of Education and five persons elected by contributors to the Fund. The Bill will reduce to five the number of members appointed by the Minister.

20. At present the chairman of the Commission is appointed by the Minister from the members of the Commission to hold office for three years. Under the Bill the chairman will be elected for a one-year term and will be elected in alternate years by and from among the elected members of the Commission or the appointed members of the Commission.

21. The quorum of the Commission is reduced from eight members to seven members.

22. The members of the Commission are protected against liability for acts or omissions in the performance or intended performance of powers or duties under the Act or the regulations.

23. Currently, the Commission may in its own name contract and be contracted with and sue and be sued in respect of property. The Bill will remove the reference to property now contained in subsection 3 (3) of the Act, so that the powers of the Commission in these matters will be the same as those of a corporation.

24. Superannuation allowances and disability allowances under the Bill are made applicable as of the 1st day of September, 1984 to persons who ceased to be employed in education on or after the 31st day of May, 1982.

Bill 148 1983

An Act to revise the Teachers' Superannuation Act

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Interpretation

1.—(1) In this Act,

(a) "average salary", of a person, means the person's average salary for the five years during which the person's salary was highest;

(b) "Bank of Canada rate" means the rate of interest set by the Bank of Canada for loans by the Bank of Canada to the chartered banks, as published by the Bank of Canada;

R.S.O. 1980, c. 129

(c) "board" has the same meaning as in the *Education Act*;

R.S.O. 1980, c. 152

(d) "child" has the same meaning as in the *Family Law Reform Act*;

(e) "Commission" means Teachers' Superannuation Commission;

(f) "Commission bank account" means the account kept in a chartered bank of Canada under this Act in the name of the Treasurer as custodian of the Fund;

(g) "debenture rate", in relation to a fiscal year, means the weighted average of the rate of interest of the Province of Ontario debentures issued in the fiscal year under section 72;

(h) "designated organization" means an organization designated by the Lieutenant Governor in Council for the purpose of this Act and the regulations;

(i) "designated private school" means a school, college, academy or other educational institution designated by the Lieutenant Governor in Council as a private school for the purpose of this Act and the regulations;

(j) "employed in education" means engaged for any period,

(i) as a teacher in a school within the meaning of the *Education Act*, R.S.O. 1980, c. 129

(ii) as a teacher in a school or class prescribed by the regulations,

(iii) as a teacher in a school outside Ontario under a teacher exchange system authorized by the Minister of Education,

(iv) as a teacher by the minister of a ministry of the Government of Ontario,

(v) as a teacher on the staff of the faculty of education of an Ontario university,

(vi) as a teacher in a designated private school,

(vii) as an employee by a board or in the Ministry of Education,

(viii) by the Minister of Education or a board in any capacity prescribed by the regulations,

(ix) as an employee of a designated organization in a capacity prescribed by the regulations,

but no person shall be deemed to be employed in education who,

R.S.O. 1980, c. 129

(x) is not qualified as a teacher under the *Education Act* and the regulations under that Act,

(xi) is regularly engaged outside Ontario and who is performing services in Ontario under a teacher exchange system approved by the Minister of Education, or

(xii) is a contributor to a fund to which the Crown contributes except the Teachers' Superannuation Fund, the Superannuation Adjustment Fund and the *Canada Pension Plan*,

R.S. C. 1970, c. C-5

and "employment in education" has a corresponding meaning;

(k) "employer", in relation to a person employed in education, means employer in relation to the person's employment in education;

R.S.O. 1980, c. 291

(l) "fiscal year" has the same meaning as in the *Ministry of Treasury and Economics Act*;

(m) "Fund" means Teachers' Superannuation Fund;

(n) "Fund rate", in relation to a year, means the weighted average yield of the debentures held by the Fund as at the 31st day of December in the previous year;

(o) "Minister" means the member of the Executive Council to whom the administration of this Act is assigned;

(p) "regulations" means regulations made under this Act;

(q) "salary" means remuneration paid for services in employment in education, and includes a cost of living allowance paid in relation to the remuneration;

(r) "school year" means the period from and including the 1st day of September in one year to and including the 31st day of August in the next year;

R.S.O. 1980, c. 152

(s) "spouse" has the same meaning as in Part II of the *Family Law Reform Act*;

(t) "Treasurer" means Treasurer of Ontario and Minister of Economics;

(u) "unfunded liability base" means the unfunded liability of the Fund as of the 31st day of December, 1981 according to the 1981 Revised Valuation of the Fund by the actuary of the Commission;

(v) "unfunded liability of the Fund" means the amount by which the assets of the Fund are less than the liabilities of the Fund;

(w) "Year's Maximum Pensionable Earnings Average", of a person, means the average of the Year's Maximum Pensionable Earnings under the *Canada Pension Plan* of the year in which the person ceased to be employed in education and each of the two preceding years. R.S. C. 1970, c.C-5

Teacher

(2) Every person,

(a) to whom the Minister of Education has granted a certificate of qualification or a letter of standing; or

(b) in respect of whom the Minister of Education has granted a letter of permission to a board,

shall be deemed to be qualified as a teacher for the purposes of this Act so long as the certificate of qualification, letter of standing, or letter of permission granted in respect of the person remains valid. R.S.O. 1980, c. 494, s. 1.

Salary

(3) For the purposes of this Act, "salary" does not include remuneration for services other than services in employment in education, does not include payment of an amount for expenses (whether the amount is accountable or non-accountable), does not include a perquisite related to employment, does not include payment related to accumulated sick leave or other benefit credits, and does not include payment related to retirement or severance from employment, whether or not the remuneration, payment or perquisite is a term or condition of employment in education. R.S.O. 1980, c. 494, s. 24 (4, 5).

Credit for service

(4) For the purpose of computing the annual superannuation allowance or disability allowance to which a person is entitled under this Act, a person is entitled to a year of credit in the Fund for each school year, and to a proportionate part of a year of credit in the Fund for each part of a school year, for which contributions are made to the Fund by or on behalf of the person. R.S.O. 1980, c. 494, s. 29 (6).

Age of child attending school

(5) For the purpose of determining entitlement to a survivor allowance under this Act, a person who has attained the age of eighteen years but has not attained the age of twenty-five years and who is in full-time attendance at a school, college, university or other institution that is recognized by the Commission as a place of higher education, shall be deemed not to have attained the age of eighteen years. R.S.O. 1980, c. 494, s. 36 (5).

Vested interest in allowance

(6) For the purpose of determining entitlement to a survivor allowance related to an allowance under this Act, the person who, upon ceasing to be employed in education, is or would be entitled to the allowance under this Act has a vested interest in the allowance under this Act.

Bank of Canada rate

(7) For the purpose of establishing the Bank of Canada rate, the periodic publication entitled the Bank of Canada Review purporting to be published by the Bank of Canada is admissible in evidence as conclusive proof of the Bank of Canada rate as set out therein, without further proof of the authenticity of the publication. *New*.

CONTRIBUTIONS

Contribution rates R.S.C. 1970, c. C-5

2.—(1) Every person employed in education who contributes under the *Canada Pension Plan* shall contribute to the Fund from the salary paid to the person for the calendar year,

(a) 6.9 per cent of the part thereof below the Year's Basic Exemption as prescribed by the *Canada Pension Plan*;

(b) 5.1 per cent of the part thereof between the Year's Basic Exemption and the Year's Maximum Pensionable Earnings as prescribed by the *Canada Pension Plan*; and

(c) 6.9 per cent of the part thereof in excess of the Year's Maximum Pensionable Earnings.

Idem

(2) Every person employed in education who does not contribute under the *Canada Pension Plan* shall contribute to the Fund 6.9 per cent of salary.

Salaries under $10,000

(3) Where the annual rate of salary is less than $10,000, it shall, for the purposes of this section, be deemed to be at the annual rate of $10,000. R.S.O. 1980, c. 494, s. 24 (1-3).

Exception

(4) Subsections (1) and (2) do not apply to a person in a designated private school or a designated organization who elects

in accordance with this Act to be excluded from the benefits and obligations of this Act. *New*.

Interpretation

3.—(1) In this section, "due date", in relation to a contribution, means the date on which the employer is required by subsection (3) to deliver the contribution to the Commission.

Deductions by employer

(2) The employer of a person employed in education shall deduct the amount the person is required to contribute to the Fund from the salary paid to the person.

Transfer of contribution

(3) The employer, on or before but not later than the last day of each month in which the salary is paid, shall deliver to the Commission, the amount deducted or shall deposit the amount deducted in the Commission bank account.

Interest

(4) Interest is payable by the employer to the Commission on the amount of each contribution due under subsection (3) from the date the contribution is due to the date the contribution is delivered to the Commission or deposited in the Commission bank account.

Rate of interest

(5) The rate at which the interest is payable is the Bank of Canada rate in effect on the date the contribution is due under subsection (3) plus 4 per cent.

Compound interest

(6) Interest payable under subsection (4) shall be compounded annually on the anniversary of the due date of the contribution in respect of which the interest is payable.

Reports

(7) Every employer of persons employed in education shall report to the Commission from time to time as required by the Commission in respect of contributions deducted. R.S.O. 1980, c. 494, s. 25 (1-4).

Interpretation

4.—(1) In this section, "agreement" means agreement to provide an income in the event of a long term disability to a person who contributes to the Fund.

Long term disability income plans
R.S.O. 1980, cc. 464, 218

(2) An agreement between the Minister of Education, a board, the Ontario Teachers' Federation, an affiliate as defined in the *School Boards and Teachers Collective Negotiations Act* or any other authority approved by the Commission and an insurer within the meaning of the *Insurance Act* is not effective for the purposes of this Act unless approved by the Commission.

Recipient's contributions

(3) The Commission shall accept a contribution made by the insurer or by the employer or former employer, as the case may be, in accordance with an agreement approved by the Commis-

sion on behalf of a person who contributes to the Fund for each month in respect of which the person receives a payment under the agreement where the contribution by the insurer or employer is made on or before the fifteenth day of the month next following the payment, except where the person has attained the age of sixty-five years or is in receipt of an allowance from the Fund and the contributions shall, subject to subsection (5), be 6.9 per cent of the annual rate of salary paid to the person immediately before the cessation of the person's employment in education.

Idem

(4) Where a person who is employed in education qualifies or has qualified for a benefit in respect of a disability incurred on or after the 1st day of July, 1974 under a long term income protection plan established under the *Public Service Act*, R.S.O. 1980, c. 418 whether or not the person is in receipt of the benefit, a contribution of 6.9 per cent of the salary of the person in the month next preceding the month in which the person qualifies or qualified for the benefit shall be made to the Fund on behalf of the person out of moneys appropriated therefor by the Legislature for each month or part of a month for which the person continues to qualify for the benefit, and the person shall be given credit in the Fund for the period of time for which the contribution is made.

Adjustment in line with cost of living

(5) Where an agreement approved by the Commission provides for payments to vary in amount from time to time in accordance with the cost of living, the amount of a contribution accepted by the Commission under subsection (3) shall be increased or decreased, without limitation, in proportion to the increase or decrease in the cost of living.

Adjustments not provided for in agreement

(6) An additional contribution may be made to the Fund by or for a person mentioned in subsection (1) under an agreement approved by the Commission that does not provide for payments to vary from time to time in accordance with the cost of living.

Amount of additional contribution

(7) The amount of an additional contribution under subsection (6) shall be equal to 6.9 per cent of the amount of the increase in the annual rate of salary that would be paid to the person if the annual rate of salary were increased in each year after the person ceased to be employed in education in the same manner as a pension would be increased in each year under the *Superannuation Adjustment Benefits Act* R.S.O. 1980, c. 490 without adjustment to reduce or increase the Consumer Price Index ratio determined under that Act.

Application of additional contributions

(8) An additional contribution under subsection (6) may be made in any year after the first year of contribution but applies

only in respect of the year in which the contribution is made. R.S.O. 1980, c. 494, s. 39.

Contributions by Province

5.—(1) The Treasurer shall deposit in the Commission bank account on the 1st day of January in each year from the Consolidated Revenue Fund an amount equal to the contributions made to the Fund during the year before the preceding year by or on behalf of persons employed in education.

Exceptions

(2) Subsection (1) does not apply in respect of a person employed in education within the meaning of subclause 1 (1) (j) (v), (vi) or (ix).

Idem

(3) Subsection (1) does not apply in respect of persons who under the regulations are themselves required to pay a sum in lieu of the sum that would otherwise be paid by the Treasurer under subsection (1). R.S.O. 1980, c. 494, s. 26 (1, 2), *part*.

Amounts related to contributions under long term disability agreements

(4) Subsection (1) applies in respect of contributions made to the Fund in accordance with section 4 (which relates to long term disability agreements). R.S.O. 1980, c. 494, s. 39 (4).

Interest payable by Treasurer

6.—(1) The Treasurer shall pay interest on the sums placed to the credit of the Fund by the Treasurer under section 5 at the debenture rate for the fiscal year next preceding the fiscal year in which the sum is placed to the credit of the Fund.

Term

(2) The interest on a sum mentioned in subsection (1) is payable from the 1st day of June in the fiscal year preceding the fiscal year in which the sum is placed to the credit of the Fund to the date that the sum is placed to the credit of the Fund. R.S.O. 1980, c. 494, s. 27.

Contributions by certain organizations

7.—(1) An organization that employs a person mentioned in subsection 5 (2), on or before the last day of each month in which the organization pays salary to the person for employment in education, shall deliver to the Commission or shall deposit in the Commission bank account an amount equal to the contributions made to the Fund by or on behalf of the persons employed in education by the organization.

Interest payable by organization

(2) Interest is payable by the organization to the Commission on amounts mentioned in subsection (1) at the same rate and for the same period of time mentioned in section 3. R.S.O. 1980, c. 494, s. 26 (2) (b).

Deficiency

8. When the payments into the Fund in any year are insufficient to make the required payments out of the Fund, the deficiency shall be made up out of the Consolidated Revenue Fund. R.S.O. 1980, c. 494, s. 12.

Private schools

9.—(1) The Lieutenant Governor in Council by order may designate a school, college, academy or other educational institution that meets the criteria set out in subsection (3) as a private school for the purpose of this Act and the regulations.

Effective date of designation

(2) A designation under subsection (1) comes into force on the 1st day of September next following the designation.

Criteria

(3) The criteria referred to in subsection (1) are that the school, college, academy or other educational institution,

(a) is giving instruction equivalent to that given in elementary schools or secondary schools in Ontario;

(b) is not operated for profit or gain and the profits, if any, are used to carry out its objects;

(c) is not supported in any way by school taxes or by provincial or municipal grants; and

(d) by its governing body, undertakes in writing,

(i) to make such annual reports to the Commission as the Commission may require for the purpose of the administration of this Act and to supply such information as to its constitution, operations, teaching staff and otherwise as the Commission may require,

(ii) to pay monthly to the Commission, for those persons on its teaching staff who are contributors to the Fund, the moneys that an employer of persons employed in education is required by this Act to deduct and deliver to the Commission, together with a sum calculated thereon at a rate equal to the rate according to which the Treasurer places sums, related to the moneys that employers of persons employed in education deduct and deliver to the Commission, to the credit of the Fund under this Act, and

(iii) to perform any administrative functions necessary as an employer for the administration of this Act and the regulations.

Qualifications of teacher R.S.O. 1980, c. 129

(4) A teacher in a designated private school may establish credit in the Fund under this section only in respect of teaching service rendered while qualified as a teacher under the *Education Act* and the regulations under that Act.

Nature of teaching service

(5) A teacher in a designated private school may establish credit in the Fund under this section only in respect of teaching service equivalent to that given in elementary schools or secondary schools in Ontario.

Past teaching service

(6) A teacher in a designated private school who has established credit in the Fund under this section is entitled to establish credit in the Fund in respect of past teaching service in a designated private school in accordance with the regulations, to re-establish credit in the Fund in respect of past teaching service in any other school in accordance with this Act and to establish credit in the Fund in respect of active service in accordance with the regulations.

Value of board or lodging as part of salary

(7) The salary of a teacher who contributes to the Fund in relation to employment in a designated private school and who receives board or lodging related to employment by a designated private school shall be deemed to be such amount, having regard for the board or lodging, as is determined by the Commission.

Exception

(8) A person who is a teacher in a school, college, academy or other educational institution on the date it is designated under subsection (1) may elect to be excluded from the benefits and obligations of this Act while employed in a designated private school.

Idem, notice

(9) An election under subsection (8) is not effective unless given in writing to the governing body of the designated private school and to the Commission,

(a) where the person is qualified as a teacher under the *Education Act* and the regulations under that Act when the designation becomes effective, not later than three months after the date when the designation becomes effective; or

(b) where the person becomes qualified as a teacher under the *Education Act* and the regulations under that Act after the date when the designation becomes effective, not later than three months after the person becomes so qualified.

Termination of designation

(10) Upon the recommendation of the Minister, the Lieutenant Governor in Council by order may terminate the designation of a designated private school.

Grounds

(11) The Minister may recommend the termination of a designation where,

(a) the designated private school, by its governing body, has requested the termination of the designation;

(b) the designated private school is not complying with this Act; or

(c) there is a change in the objects or mode of carrying out the objects of the designated private school.

Notice and submissions

(12) Before recommending the termination of the designation of a designated private school, the Minister shall give notice of the proposed recommendation to the governing body of the designated private school and to the employees of the designated private school who are employed in education and shall receive and consider the written submissions, if any, made within a reasonable time by the governing body and the employees of the designated private school.

Effective date

(13) An order by the Lieutenant Governor in Council terminating the designation of a designated private school is effective the 31st day of August next following the date of the order.

Effect of termination of designation

(14) Upon the termination of the designation of a designated private school, the persons who are teachers in the school, college, academy or other educational institution shall, for the purposes of this Act, be deemed to cease to be employed in education. R.S.O. 1980, c. 494, s. 21.

Organizations

10.—(1) The Lieutenant Governor in Council by order may designate an organization that meets the criteria set out in subsection (3) as an organization for the purpose of this Act and the regulations.

Effective date of designation

(2) A designation under subsection (1) comes into force on the 1st day of September next following the designation.

Criteria

(3) The criteria referred to in subsection (1) are that the organization,

(a) provides services related to elementary or secondary education;

(b) is not operated for profit or gain and the profits, if any, are used to carry out its objects; and

(c) by its governing body, undertakes in writing,

(i) to make such annual reports to the Commission as the Commission may require for the purpose of the administration of this Act and to supply such information as to its constitution, operations, teaching staff and otherwise as the Commission may require,

(ii) to pay monthly to the Commission, for those of its employees who are contributors to the Fund, the moneys that an employer of persons employed in education is required by this Act to deduct and deliver to the Commission, together with a sum calculated thereon at a rate equal to the rate according to which the Treasurer places sums, related to the moneys that employers of persons employed in education deduct and deliver to the Commission, to the credit of the Fund under this Act, and

(iii) to perform any administrative functions necessary as an employer for the administration of this Act and the regulations.

Qualifications for credit

(4) A person employed by a designated organization in a capacity prescribed by the regulations may establish credit in the Fund under this section only in respect of employment while qualified as a teacher under the *Education Act* and the regulations under that Act.

R.S.O. 1980, c. 129

Past employment

(5) A person who is employed by a designated organization in a capacity prescribed by the regulations and who establishes credit in the Fund under this section is entitled to establish credit in the Fund in respect of past employment by a designated organization in a capacity prescribed by the regulations and to establish credit in the Fund in respect of active service in accordance with the regulations.

Value of board or lodging as part of salary

(6) The salary of a person who contributes to the Fund in relation to employment by a designated organization and who receives board or lodging related to employment by a designated organization shall be deemed to be such amount, having regard for the value of the board or lodging, as is determined by the Commission.

Exception

(7) A person who is employed by an organization on the date it is designated under subsection (1) may elect to be excluded from the benefits and obligations of this Act while employed by a designated organization.

Idem, notice

(8) An election under subsection (7) is not effective unless given in writing to the governing body of the designated organization and to the Commission,

R.S.O. 1980, c. 129

(a) where the person is qualified as a teacher under the *Education Act* and the regulations under that Act when the designation becomes effective, not later than three months after the date when the designation becomes effective;

(b) where the person becomes qualified as a teacher under the *Education Act* and the regulations under that Act after the date when the designation becomes effective, not later than three months after the person becomes so qualified.

Termination of designation

(9) Upon the recommendation of the Minister, the Lieutenant Governor in Council by order may terminate the designation of a designated organization.

Grounds

(10) The Minister may recommend the termination of a designation where,

(a) the designated organization, by its governing body, has requested the termination of the designation;

(b) the designated organization is not complying with this Act; or

(c) there is a change in the objects or mode of carrying out the objects of the designated organization.

Notice and submissions

(11) Before recommending the termination of the designation of a designated organization, the Minister shall give notice of the proposed recommendation to the governing body of the designated organization and to the employees of the designated organization who are employed in education and shall receive and consider the written submissions, if any, made within a reasonable time by the governing body and the employees of the designated organization.

Effective date

(12) An order by the Lieutenant Governor in Council terminating the designation of a designated organization is effective the 31st day of August next following the date of the order.

(13) Upon the termination of the designation of a designated organization, the persons who are engaged by the organization shall, for the purposes of this Act, be deemed to cease to be employed in education. *New.*

Effect of termination of designation

11. A person employed on the staff of a college of applied arts and technology who, under a predecessor of this Act, is deemed to be employed in education and,

Colleges of applied arts and technology

(a) who continues to be employed full-time on the staff of a college of applied arts and technology on the date this section comes into force, shall be deemed to have continued to be and to continue to be employed in education in each school year in which the person was or is employed full-time on the staff of a college of applied arts and technology;

(b) who is employed part-time on the staff of a college of applied arts and technology on the date this section comes into force, shall be deemed to have continued to be and to continue to be employed in education in each school year in which the person was or is employed part-time or full-time on the staff of a college of applied arts and technology; or

(c) who changes from full-time to part-time employment on the staff of a college of applied arts and technology after the date this section comes into force, shall be deemed not to be employed in education as of the date on which the person ceases to be employed full-time on the staff of the college. *New.*

SUPERANNUATION ALLOWANCES

12.—(1) Every person who ceases to be employed in education and who has a number of years of credit in the Fund that, when added to the person's age on the date when the person ceases to be employed in education, totals at least ninety years is entitled to an annual superannuation allowance during the person's lifetime. R.S.O. 1980, c. 494, s. 28 (2).

Allowance where years of credit plus age equal ninety

(2) The amount of the annual superannuation allowance to which a person is entitled under this section shall be computed as follows:

Computation of allowance

1. Multiply an amount equal to 2 per cent of the average salary of the person by the number of years, not exceeding thirty-five, for which the person has credit in the Fund.

R.S.C. 1970, c. C-5

2. Where the person has contributed to the *Canada Pension Plan*, reduce the amount computed under paragraph 1 by an amount equal to 0.7 per cent of that part of the average salary of the person that does not exceed the Year's Maximum Pensionable Earnings Average of the person multiplied by the number of years, not exceeding thirty-five, for which the person has credit in the Fund after the year 1965.

3. Where the person ceased to be employed in education before attaining the age at which the person could become eligible for a benefit under the *Canada Pension Plan* or commences to receive a disability pension under the *Canada Pension Plan*, the reduction under paragraph 2 does not apply until the first day of the month next following the month in which the person attains such age. R.S.O. 1980, c. 494, s. 29.

Commencement of allowance

(3) An annual superannuation allowance under this section shall commence as of the first day of the month next following the month in which the person entitled to the allowance ceases to be employed in education. R.S.O. 1980, c. 494, s. 43 (1).

Allowance after ten or more years of credit

13.—(1) Every person who contributes to the Fund and who meets the qualifications set out in subsection (2) is entitled to an annual superannuation allowance during the person's lifetime.

Qualifications for allowance

(2) The qualifications for an annual superannuation allowance under this section are:

1. The person must have ten or more years of credit in the Fund.

2. The person must have ceased to be employed in education.

3. The number of years for which the person has credit in the Fund plus the person's age when the person ceases to be employed in education must total less than ninety years.

Computation of allowance

(3) The amount of an annual superannuation allowance under this section shall be computed as follows:

1. Multiply an amount equal to 2 per cent of the average salary of the person by the number of years, not exceeding thirty-five, for which the person has credit in the Fund.

2. Where the person has contributed to the *Canada Pension Plan*, reduce the amount computed under paragraph 1 by an amount equal to 0.7 per cent of that part of the average salary of the person that does not exceed the Year's Maximum Pensionable Earnings Average of the person multiplied by the number of years, not exceeding thirty-five, for which the person has credit in the Fund after the year 1965. R.S.C. 1970, c. C-5

3. Where the person ceased to be employed in education before attaining the age at which the person could become eligible for a benefit under the *Canada Pension Plan* or commences to receive a disability pension under the *Canada Pension Plan*, the reduction under paragraph 2 does not apply until the first day of the month next following the month in which the person attains such age.

4. In the case of an allowance that is to commence before the first day of the month following the month in which the person attains the age of sixty-five years, reduce the amount computed under paragraphs 1 to 3 at the rate of 5 per cent times the lesser of,

   i. the number of years by which the person's age is less than sixty-five years on the date on which the allowance is to commence, or

   ii. ninety minus the sum of the number of years for which the person has credit in the Fund and the person's age on the date on which the allowance is to commence.

Commencement of allowance

(4) An annual superannuation allowance under this section shall commence, at the option of the person entitled to the allowance,

(a) on the first day of any month after the month in which the person attains the age of fifty-five years, if the person is not employed in education at the time the allowance is to commence; or

(b) as of the first day of the month next following the month in which the person entitled to the allowance attains the age of sixty-five years or, where the person is employed in education in the month in which the person attains the age of sixty-five years, on the first day of the month next following the month in

which the person ceases to be employed in education. R.S.O.1980, c. 494, s. 32.

Allowance after ten years of service but less than ten years of credit

14.—(1) Every person who contributes to the Fund and who meets the qualifications set out in subsection (2) is entitled to an annual superannuation allowance during the person's lifetime.

Qualifications for allowance

(2) The qualifications for an annual superannuation allowance under this section are:

1. The person must have credit in the Fund, but the credit must be for less than ten years.

2. The person must have ceased to be employed in education after attaining the age of forty-five years.

3. The person must have been in the service of the person's last employer for a continuous period of at least ten years.

Computation of allowance

(3) The amount of an annual superannuation allowance under this section shall be computed as follows:

1. Where the person has credit in the Fund for five or more years, multiply an amount equal to 2 per cent of the average salary of the person by the number of years for which the person has credit in the Fund.

2. Where the person has credit in the Fund for less than five years of service, multiply an amount equal to 2 per cent of the average salary of the person during the period of time for which the person has credit in the Fund by the number of years for which the person has credit in the Fund.

R.S.C. 1970, c. C-5

3. Where the person has contributed to the *Canada Pension Plan*, reduce the amount computed under paragraph 1 or 2 by an amount equal to 0.7 per cent of that part of the average salary of the person that does not exceed the Year's Maximum Pensionable Earnings Average of the person multiplied by the number of years for which the person has credit in the Fund after the year 1965.

4. Where the person ceased to be employed in education before attaining the age at which the person could become eligible for a benefit under the *Canada Pension Plan* or commences to receive a disability pension under the *Canada Pension Plan*, the reduc-

tion under paragraph 3 does not apply until the first day of the month next following the month in which the person attains such age.

5. In the case of an allowance that is to commence before the first day of the month following the month in which the person attains the age of sixty-five years, reduce the amount computed under paragraphs 1 to 4 at the rate of 5 per cent times the number of years by which the person's age is less than sixty-five years on the date on which the allowance is to commence.

Minimum allowances

(4) No increase in the amount of an allowance to a prescribed minimum amount applies to a superannuation allowance computed under this section or to a survivor allowance related to such a superannuation allowance.

Exceptions

(5) Subsection (4) does not apply if superannuation allowances under this section or, in the case of survivor allowances, survivor allowances related to such superannuation allowances, are specifically included in the prescribed minimum amounts.

Commencement of allowance

(6) An annual superannuation allowance under this section shall commence, at the option of the person entitled to the allowance,

(a) on the first day of any month after the month in which the person attains the age of fifty-five years, if the person is not employed in education at the time the allowance is to commence; or

(b) as of the first day of the month next following the month in which the person entitled to the allowance attains the age of sixty-five years or, where the person is employed in education in the month in which the person attains the age of sixty-five years, on the first day of the month next following the month in which the person ceases to be employed in education. *New*.

Reduced allowance upon re-employment in education

15.—(1) A person who is receiving a superannuation allowance under this Act and who again becomes employed in education for more than the number of days prescribed by the regulations is entitled to continue to receive the allowance while employed in education subject to the conditions and in a reduced amount calculated in the manner prescribed by the regulations.

Election

(2) A person mentioned in subsection (1) may elect to cease to receive the superannuation allowance while employed in education.

Notice of election

(3) An election under subsection (2) must be made by notice in writing delivered to the Commission.

Effect of not making election

(4) A person mentioned in subsection (1) who does not make an election under subsections (2) and (3) is not entitled, upon ceasing to be employed in education, to an adjustment of the superannuation allowance in respect of contributions or service for the period of employment in education unless the person pays to the Fund an amount equal to the total of the amounts of the superannuation allowance payments received by the person during the period the person was again employed in education together with interest on the amount of each of such superannuation allowance payment.

Interest on amounts repaid

(5) Interest under subsection (4) shall be computed on the amount of each superannuation allowance payment for the period from the date the payment was made out of the Fund to the date of repayment to the Fund at the debenture rate for the fiscal year at the date of re-employment in education. R.S.O. 1980, c. 494, s. 46 (1).

Resumption of superannuation allowance

16.—(1) Where a person ceases to receive a superannuation allowance under this Act because of re-employment in education and the re-employment in education is for less than two years, the person is entitled upon the cessation of the re-employment to the resumption of the superannuation allowance without adjustment of the amount of the allowance as if the election had not been made.

Application for allowance

(2) Where the re-employment in education is for two or more years, the person is entitled upon the cessation of the re-employment to apply for an allowance under this Act. R.S.O. 1980, c. 494, s. 47, *part*.

DISABILITY ALLOWANCES

Disability allowance to person incapable of further employment

17.—(1) Every person who,

(a) has credit in the Fund for ten or more years;

(b) while employed in education becomes mentally or physically incapacitated to a degree that in the opinion of the Commission renders the person incapable of further earning a livelihood;

(c) ceases to be employed in education before the end of the school year in which the person would attain the age of sixty-five years; and

(d) makes application within two years from the date upon which the person was last employed in education,

is entitled, subject to section 25, to an annual disability allowance during the person's lifetime.

Computation of allowance

(2) The amount of the annual disability allowance to which a person is entitled under this section shall be computed as follows:

1. Multiply an amount equal to 2 per cent of the average salary of the person by the number of years, not exceeding thirty-five, for which the person has credit in the Fund.

2. Where the person has contributed to the *Canada Pension Plan*, reduce the amount computed under paragraph 1 by an amount equal to 0.7 per cent of that part of the average salary of the person that does not exceed the Year's Maximum Pensionable Earnings Average of the person multiplied by the number of years, not exceeding thirty-five, for which the person has credit in the Fund after the year 1965. R.S.C. 1970, c. C-5

3. Where the person ceased to be employed in education before attaining the age at which the person could become eligible for a benefit under the *Canada Pension Plan* or commences to receive a disability pension under the *Canada Pension Plan*, the reduction under paragraph 2 does not apply until the first day of the month next following the month in which the person attains such age or commences to receive the disability pension. R.S.O. 1980, c. 494, s. 33.

Disability allowance to person incapable of further employment in education

18.—(1) Every person who,

(a) has credit in the Fund for ten or more years;

(b) while employed in education becomes mentally or physically incapacitated to a degree that in the opinion of the Commission renders the person incapable of being further employed in education;

(c) ceases to be employed in education before the end of the school year in which the person would attain the age of sixty-five years; and

(d) makes application within two years from the date upon which the person was last employed in education,

is entitled, subject to section 25, to an annual disability allowance during the person's lifetime.

Computation of allowance

(2) The amount of the annual disability allowance to which a person is entitled under this section shall be computed as follows:

1. Multiply an amount equal to 2 per cent of the average salary of the person by the number of years, not exceeding thirty-five, for which the person has credit in the Fund.

R.S.C. 1970, c. C-5

2. Where the person has contributed to the *Canada Pension Plan*, reduce the amount computed under paragraph 1 by an amount equal to 0.7 per cent of that part of the average salary of the person that does not exceed the Year's Maximum Pensionable Earnings Average of the person multiplied by the number of years, not exceeding thirty-five, for which the person has credit in the Fund after the year 1965.

3. Where the person ceased to be employed in education before attaining the age at which the person could become eligible for a benefit under the *Canada Pension Plan* or commences to receive a disability pension under the *Canada Pension Plan*, the reduction under paragraph 2 does not apply until the first day of the month next following the month in which the person attains such age or commences to receive the disability pension.

4. Reduce the amount computed under paragraphs 1 to 3 at the rate of 2½ per cent times the lesser of,

   i. the number of years by which the person's age is less than sixty-five years on the date on which the allowance is to commence, or

   ii. ninety minus the sum of the number of years for which the person has credit in the Fund and the person's age on the date on which the allowance is to commence.

to a maximum reduction of 25 per cent under this paragraph. R.S.O. 1980, c. 494, s. 34.

Change of disability status for purpose of survivor allowance

19. Where a person receiving an annual disability allowance under this Act related to incapability of being employed in education dies leaving a spouse or a child surviving, and provision was made for a special medical re-examination and no decision was made by the Commission on such re-examination before the person's death, the Commission may, if it is of the opinion having regard to the facts established at the date of the person's death that the person should have been receiving an annual disability allowance under this Act related to incapability of further earning a livelihood, recompute the disability allowance in accordance with this Act as of the date of death as a disability allowance under this Act related to incapability of further earning a livelihood for the purpose of the survivor allowance under this Act. R.S.O. 1980, c. 494, s. 37.

Proof of disability

20. No application for a disability allowance under this Act shall be considered by the Commission until the Commission has obtained,

(a) the certificate of a legally qualified medical practitioner designated by the Commission, certifying that while employed in education the applicant became mentally or physically incapacitated and indicating the nature and degree of the incapacitation; and

(b) the report of the medical referee of the Commission containing such recommendations as the medical referee considers proper with regard to the granting of an allowance to the applicant. R.S.O. 1980, c. 494, s. 41.

Commencement of disability allowance

21.—(1) A disability allowance under this Act shall commence as of the first day of the month next following the month in which the person entitled to the allowance ceases to be employed in education.

Idem

(2) Notwithstanding subsection (1), a disability allowance under this Act shall not commence as of a date earlier than one year before the date upon which the completed application for the allowance reaches the Commission. R.S.O. 1980, c. 494, s. 43 (1).

Effect of re-employment

22. A person who is receiving a disability allowance under section 17 and who becomes employed ceases to be entitled to the disability allowance. R.S.O. 1980, c. 494, s. 46 (2).

Effect of re-employment in education

23. A person who is receiving a disability allowance under section 18 and who becomes employed in education or employed as a teacher in a school or institution ceases to be entitled to the disability allowance until the person ceases to be so employed. R.S.O. 1980, c. 494, s. 46 (3).

Resumption of disability allowance

24.—(1) Where a person ceases to receive a disability allowance under this Act because of re-employment in education and the re-employment in education is for less than two years, the person is entitled upon the cessation of the re-employment to the resumption of the disability allowance without adjustment of the amount of the disability allowance.

Application for allowance

(2) Where the re-employment in education is for two or more years, the person is entitled upon the cessation of the re-employment to apply for an allowance under this Act. R.S.O. 1980, c. 494, s. 48.

Evidence of mental or physical condition

25.—(1) The Commission may at any time require a person who is receiving a disability allowance under this Act to furnish evidence, in such form as the Commission directs, of the person's mental or physical condition.

Failure to furnish evidence

(2) Where the person fails to furnish evidence that the person's mental or physical condition continues to be of a nature that entitles the person to receive the disability allowance, the Commission may terminate payment of the disability allowance.

Review by Commission

(3) Where the disability allowance was an allowance under section 17, the person may request the Commission to review the matter and the Commission shall make the review and may direct payment to the person of such disability allowance as the person is entitled to under this Act. R.S.O. 1980, c. 494, s. 49.

SURVIVOR ALLOWANCES

Survivor allowance to spouse of person receiving allowance

26.—(1) The spouse of a person who dies while receiving an allowance under this Act is entitled to an annual survivor allowance during the spouse's lifetime.

Amount of survivor allowance

(2) The amount of the annual survivor allowance under this section is,

(a) where the deceased person had attained the age of sixty-five years at the date of death, one-half of the allowance that the deceased person was receiving at the date of death; or

(b) where the deceased person had not attained the age of sixty-five years at the date of death, one-half of the allowance that the deceased person would have received as of the first day of the month next following the month in which the deceased person would have attained the age of sixty-five years.

Exception

(3) Subsections (1) and (2) do not apply to the surviving spouse of a deceased person if they became spouses after the date of the deceased person's last day of employment in education. R.S.O. 1980, c. 494, s. 36 (1, 2), *part*.

Survivor allowance to spouse of person with vested interest in allowance

27.—(1) The spouse of a person who dies with a vested interest in but before receiving an allowance under this Act is entitled to an annual survivor allowance during the spouse's lifetime.

Amount of survivor allowance

(2) The amount of the annual survivor allowance under this section is an amount equal to one-half of the amount computed as follows:

1. Multiply an amount equal to 2 per cent of the average salary of the person by the number of years, not exceeding thirty-five, for which the person has credit in the Fund.

2. Where the person has contributed to the *Canada Pension Plan*, reduce the amount computed under paragraph 1 by an amount equal to 0.7 per cent of that part of the average salary of the person that does not exceed the Year's Maximum Pensionable Earnings Average of the person multiplied by the number of years, not exceeding thirty-five, for which the person has credit in the Fund after the year 1965.

R.S.C. 1970, c. C-5

Exception

(3) Subsections (1) and (2) do not apply to the surviving spouse of a deceased person if they became spouses after the date of the deceased person's last day of employment in education. R.S.O. 1980, c. 494, s. 36 (1, 2), *part*.

Survivor allowance to child upon death of surviving spouse

28.—(1) The child or children of a person,

(a) who dies while receiving or with a vested interest in an allowance under this Act; and

(b) who is survived by a spouse who receives an annual survivor allowance in respect of the person,

are entitled upon the death of the spouse to an annual survivor allowance until the child or the youngest of the children attains the age of eighteen years.

Amount of survivor allowance

(2) The amount of the annual survivor allowance under this section is an amount equal to the amount of the annual survivor allowance to which the spouse of the deceased person was entitled after the death of the deceased person. R.S.O.1980, c. 494, s. 36 (1), *part*.

Survivor allowance to child where no surviving spouse

29.—(1) The child or children of a person,

(a) who dies while receiving an allowance under this Act and who is not survived by a spouse; or

(b) who dies with a vested interest in but is not receiving an allowance under this Act and who is not survived by a spouse,

are entitled to an annual survivor allowance until the child or the youngest of the children attains the age of eighteen years.

Amount of survivor allowance

(2) The amount of the annual survivor allowance under this section is an amount equal to the annual survivor allowance to which the spouse of the deceased person would be entitled under this Act if the deceased person were survived by a spouse. R.S.O. 1980, c. 494, s. 36 (1), *part*.

Increase of survivor allowance

30.—(1) A person employed in education may direct the Commission to increase the amount of the survivor allowance related to the allowance to which the person will be entitled when the person ceases to be employed in education to 55 per cent, 60 per cent, 65 per cent, 70 per cent or 75 per cent of the allowance and to reduce the amount of the allowance accordingly.

Time limit

(2) A direction mentioned in subsection (1) must be in writing and must be delivered to the Commission two years or more before the person ceases to be employed in education.

Exception

(3) The Commission shall accept a direction mentioned in subsection (1) that is delivered to the Commission less than two years before the person ceases to be employed in education but before the person applies for an allowance under this Act, if the Commission is satisfied that the person is in good health having regard to the person's age.

Actuarial reduction of allowance

(4) Where a direction mentioned in subsection (1) is delivered in accordance with subsection (2) or accepted in accordance with subsection (3), the amount of the allowance payable

to the person shall be actuarially reduced by the actuary of the Commission in a manner approved by the Commission to allow for the survivor allowance in accordance with the direction, and the amount of the survivor allowance related to the allowance shall be increased in accordance with the direction.

When direction not valid

(5) A direction mentioned in subsection (1) is not valid if the person who gives the direction dies before applying for an allowance under this Act or before ceasing to be employed in education.

Revocation of direction

(6) A person who gives a direction mentioned in subsection (1) may revoke the direction by a written revocation delivered to the Commission before the date of commencement of the person's allowance. *New*.

Survivor allowance to dependant

31.—(1) A person employed in education who does not have a spouse or a child to qualify for a survivor allowance under this Act may direct the Commission to pay a survivor allowance related to the person's allowance to a dependant named in the direction in an amount equal to 50 per cent, 55 per cent, 60 per cent, 65 per cent, 70 per cent or 75 per cent of the amount of the allowance to which the person will be entitled when the person ceases to be employed in education and to reduce the amount of the allowance accordingly.

Time limit

(2) A direction mentioned in subsection (1) must be in writing and must be delivered to the Commission two years or more before the person ceases to be employed in education.

Exception

(3) The Commission shall accept a direction mentioned in subsection (1) that is delivered to the Commission less than two years before the person ceases to be employed in education but before the person applies for an allowance under this Act, if the Commission is satisfied that the person is in good health having regard to the person's age.

Actuarial reduction of allowance

(4) Where a direction mentioned in subsection (1) is delivered in accordance with subsection (2) or accepted in accordance with subsection (3), the amount of the allowance payable to the person shall be actuarially reduced by the actuary of the Commission in a manner approved by the Commission to allow for the survivor allowance in accordance with the direction, and the survivor allowance shall be paid to the dependant in the percentage specified in the direction.

Where person making direction dies before retirement

(5) Where the person making the direction mentioned in subsection (1) dies before applying for an allowance under this Act or before ceasing to be employed in education, the direc-

tion is void and no survivor allowance is payable under subsection (3).

Revocation of direction

(6) A person who gives a direction mentioned in subsection (1) may revoke the direction by a written revocation delivered to the Commission before applying for an allowance under this Act. R.S.O. 1980, c. 494, s. 38.

Survivor allowance where person receiving allowance becomes a spouse

32.—(1) A person who is receiving or has a vested interest in a superannuation allowance under this Act and who becomes a spouse after ceasing to be employed in education may direct the Commission to pay a survivor allowance related to the person's allowance in the amount of 50 per cent, 55 per cent, 60 per cent, 65 per cent, 70 per cent or 75 per cent of the allowance paid or that would otherwise be payable to the person on the first day of the month next following the month in which the person becomes a spouse.

Time limit

(2) A direction mentioned in subsection (1) must be in writing and must be delivered to the Commission,

(a) within ninety days from the date on which the person becomes a spouse; or

(b) where immediately before the person becomes a spouse there is a child who would be entitled upon the death of the person to receive a survivor allowance under this Act, within ninety days from the date the child ceases to be eligible to receive the survivor allowance.

Exception

(3) The Commission may accept a direction mentioned in subsection (1) that is delivered to the Commission after the end of the period of time mentioned in subsection (2), if the Commission is satisfied that the person making the direction is in good health having regard to the person's age.

Actuarial reduction of allowance

(4) Subject to subsection (5), where a direction mentioned in subsection (1) is delivered in accordance with subsection (2) or is accepted in accordance with subsection (3), the amount of the allowance payable to the person shall be actuarially reduced by the actuary of the Commission in a manner approved by the Commission to allow for the survivor allowance in accordance with the direction, and the survivor allowance shall be paid to the surviving spouse in the percentage specified in the direction.

Interest of child

(5) A survivor allowance under this section does not become payable until there is no person eligible to receive a survivor allowance as a child of the person in receipt of or with a vested

interest in the superannuation allowance to which the survivor allowance relates. *New*.

Interpretation
R.S.O. 1980, c. 488

33.—(1) In this section, "court" has the same meaning as in Part V of the *Succession Law Reform Act*.

Where more than one surviving spouse

(2) Where more than one person applies to the Commission for a survivor allowance under this Act as spouse of a deceased person who was receiving or had a vested interest in a superannuation allowance, the court, on application by the Commission, by order may direct payment of the survivor allowance or part thereof to one or more of the applicants for the survivor allowance and may specify the proportion of the survivor allowance that shall be paid to each of them.

Application to court

(3) An application to the court may be made in the same manner as an application under Part V of the *Succession Law Reform Act*.

Consideration on application

(4) Upon the application, the court shall determine the eligibility of the persons for the survivor allowance, and section 62 of the *Succession Law Reform Act* applies with necessary modifications in respect of the allocation of proportions of the survivor allowance and, for the purpose, "dependant" means spouse of the deceased person. *New*.

Commencement of survivor allowance

34.—(1) A survivor allowance that is payable under this Act on the death of a person employed in education shall commence as of the day next following the day the person dies.

Idem

(2) A survivor allowance that is payable under this Act on the death of a person in receipt of an allowance under this Act shall commence as of the first day of the month next following the month in which the person dies. R.S.O. 1980, c. 494, s. 43 (2,3).

ALLOWANCES—GENERAL

Rules for computations re part-time employment in education

35.—(1) For the purpose of computing the entitlements under this Act and the regulations of or related to a person who is employed in education on less than a full-time basis, the following rules apply:

1. The person is entitled to credit for service in the proportion that the person's work period bears to the full-time work period for the occupational group in which the person is employed in education.

2. For the purpose of determining length of service in order to qualify for an entitlement (but not for the purpose of computing the amount of an allowance) service for a part of a year shall be deemed to be service for the whole year.

3. The person's annual salary shall be calculated according to the following:

$$\frac{S}{T} \times F = A$$

where,

S = The person's salary for the year.

T = The person's work period.

F = Full-time work period for the occupational group, as determined by the Commission.

A = Annual salary.

4. The person's average salary shall be calculated using the person's annual salary calculated in accordance with Rule 3 of these rules.

Minimum allowances

(2) No increase in the amount of an allowance to a prescribed minimum amount applies to an allowance of or related to a person who is employed in education on less than a full-time basis and has less than ten years of credit in the Fund.

Exception

(3) Subsection (2) does not apply if allowances of or related to persons mentioned in that subsection have been included in the prescribed minimum amounts before the coming into force of this Act. *New.*

Reciprocal arrangements

36.—(1) A person employed in education is entitled to credit for the period of time that the person was engaged in teaching in another part of Canada or the Commonwealth and in respect of which funds are not transferred or paid to the Fund.

Application of subs. (1)

(2) Subsection (1) applies in respect of those parts of Canada or the Commonwealth prescribed by the regulations.

Purpose of credit

(3) A credit under subsection (1) is for the purpose of determining length of service in order to qualify for an allowance but not for the purpose of computing the amount of the allowance. R.S.O. 1980, c. 494, s. 61.

Payment of allowances

37.—(1) An allowance under this Act is payable in monthly instalments. R.S.O. 1980, c. 494, s. 42.

Idem

(2) An allowance under section 14 may be paid, in the discretion of the Commission, in a lump sum, annually, or in semi-annual, quarterly or monthly instalments. R.S.O. 1980, c. 494, s. 32 (5, 7).

Application for allowance

38. An allowance under this Act shall be paid only after the receipt by the Commission of an application in the form that shall be provided by the Commission. R.S.O. 1980, c. 494, s. 40.

Termination of allowance

39. Every allowance under this Act terminates as of the end of the month in which the event that terminates the allowance occurs. R.S.O. 1980, c. 494, s. 44.

Report re employment in education

40.—(1) At the request of the Commission, a person in receipt of a superannuation allowance or a disability allowance under this Act shall report to the Commission the number of days that the person was employed in education while in receipt of the allowance.

Where report not given

(2) Where the report is not given to the Commission within a reasonable time after the request, the Commission may direct that no further allowance under this Act be paid to the person until the report is given to the Commission. R.S.O. 1980, c. 494, s. 19 (3).

Multiple allowances

41. No person is entitled to payment of two superannuation allowances or both a superannuation allowance and a disability allowance under this Act during the same month or other payment period. *New*.

Notice of re-employment by person receiving allowance

42.—(1) A person who is receiving a superannuation allowance under this Act and who becomes employed in education shall give notice in writing of the employment forthwith to the Commission.

Notice of re-employment by person receiving disability allowance

(2) A person who is receiving a disability allowance under section 17 and who becomes employed shall give notice in writing of the employment forthwith to the Commission.

Idem

(3) A person who is receiving a disability allowance under section 18 and who becomes employed in education or employed as a teacher in a school or institution shall give notice in writing of the employment forthwith to the Commission.

Failure to give notice

(4) A person mentioned in subsection (1), (2) or (3) who fails to give the notice required by the subsection is not entitled to a benefit under this Act unless the Commission otherwise directs. R.S.O. 1980, c. 494, s. 45.

Seizure of allowance

43.—(1) The interest of a person in the Fund and in an allowance under this Act is not subject to garnishment, attachment, seizure or other process of law and is not assignable. R.S.O. 1980, c. 494, s. 51.

Application of subs. (1)

(2) Notwithstanding subsection (1), payment of an allowance is subject to execution, seizure or attachment in satisfaction of an order for support or maintenance enforceable in Ontario.

Notice of enforcement

(3) Subsection (2) applies only where the person receiving payment is given ten days notice, or such greater notice as is otherwise required by law in Ontario, as to the enforcement of the order. *New*.

REFUNDS

Refund before 45 years of age

44.—(1) A person who ceases to be employed in education before attaining forty-five years of age is entitled to a refund of an amount equal to the whole of the person's contributions to the Fund with interest on each amount contributed for the period of time it was in the Fund at the rate of 3 per cent per year compounded half-yearly.

Less than ten years service

(2) A person who has credit in the Fund for less than ten years of service and ceases to be employed in education is entitled to a refund of an amount equal to the whole of the person's contributions to the Fund with interest on each amount contributed for the period of time it was in the Fund at the rate of 3 per cent per year compounded half-yearly.

Application of subs. (2)

(3) Subsection (2) does not apply if the person is entitled to an annual superannuation allowance under this Act.

Idem

(4) A person who has credit in the Fund for ten or more years of service and who has ceased to be employed in education after attaining forty-five years of age is entitled to a refund of an amount equal to the whole of the person's contributions to the Fund in respect of service before the 1st day of January, 1965, with interest on each amount contributed for the period of time it was in the Fund at the rate of 3 per cent per year compounded half-yearly.

Less than ten years service at age 65

(5) A person who has credit in the Fund for less than ten years of service and who ceases to be employed in education in

the calendar year in which the person attains or would attain sixty-five years of age or in a later calendar year, is entitled to a refund of an amount equal to twice the amount of the person's contributions to the Fund with interest thereon calculated in accordance with subsection (6).

Interest computation

(6) Interest under subsection (5) shall be computed and credited to the person as at the 31st day of December in each year at the Fund rate for the year on the contribution credited to the person for the year and on the accumulated balance of contributions at the end of the preceding year.

Effect of taking refund

(7) A refund under subsection (1), (2), (4) or (5) is in lieu of an allowance under this Act and taking the refund terminates entitlement to a superannuation allowance, a disability allowance and a survivor allowance, or any of them, in respect of the contributions to which the refund is related.

Time of payment of refund

(8) No refund under subsection (1), (2), (4) or (5) shall be made until three months after the day upon which the person ceased to be employed in education. R.S.O. 1980, c. 494, s. 53.

Manner of payment of refund

(9) A refund shall be paid in a lump sum or, at the written request of the person entitled to the refund, in three equal annual instalments without additional interest. R.S.O. 1980, c. 494, s. 52 (2).

Repayment of refund on re-employment in education

45.—(1) A person who has taken a refund of contributions from the Fund and who subsequently is employed in education for twenty or more days in a school year and desires to be reinstated in the Fund in respect of the former period of employment in education is entitled to be so reinstated upon paying to the Fund an amount equal to the total of the refund previously taken and the interest thereon, if any, paid at the time of the refund together with interest on the total at the debenture rate for the fiscal year at the date of payment of the refund for the period from the date of payment of the refund to and including the date of repayment to the Fund or, where the repayment to the Fund is made in instalments, to and including the date of payment of the first instalment to the Fund and on the balance at the debenture rate for the fiscal year at the date of payment of the first instalment from such date to and including the date of payment of the balance.

Debenture rate

(2) Where the debenture rate mentioned in subsection (1) is less than the rate specified in section 68, the debenture rate shall be deemed to be the rate specified in section 68.

Where part of refund not repaid

(3) A superannuation allowance or disability allowance to which a person mentioned in subsection (1) may become entitled under this Act during the period of repayment shall be reduced actuarially during the person's lifetime by the amount of the refund and interest that is not repaid.

Eligibility for disability allowance

(4) A person who has taken a refund of contributions from the Fund, is subsequently employed in education and elects to be reinstated in the Fund under subsection (1) is not eligible for a disability allowance under this Act until the person has been employed in education for two years after the person's return to employment.

Completion of repayment by survivor

(5) Where a person making payment into the Fund under subsection (1) dies before completing the payment, a person entitled to a survivor allowance related to the allowance to which the deceased person would have been entitled may complete the payment and the survivor allowance shall be calculated and paid in accordance with the full credit of the deceased person in the Fund.

Where payment not completed

(6) A survivor allowance mentioned in subsection (5) shall be reduced actuarially from the full credit obtainable in the Fund under that subsection by the amount of any payment not completed in accordance with that subsection. R.S.O. 1980, c. 494, s. 54.

Return of superannuate to employment

46.—(1) No refund shall be made in respect of contributions to the Fund by a person in receipt of a superannuation allowance under this Act who again becomes employed in education.

Exception

(2) Subsection (1) does not apply to prevent payment to the personal representative of a person mentioned in subsection (1) where no survivor allowance is payable under this Act on the death of the person. R.S.O. 1980, c. 494, s. 55.

Refund to personal representative

47.—(1) The personal representative of a person who was employed in education and has died is entitled to a refund out of the Fund in the circumstances described in subsection (2) and in an amount calculated in accordance with subsection (3).

When refund payable

(2) The circumstances referred to in subsection (1) are,

(a) that no survivor allowance is payable under this Act on the death of the person; or

(b) that all survivor allowances payable under this Act on the death of the person have been fully paid.

(3) The amount of the refund to the personal representative is an amount equal to, Amount of refund

(a) the amounts contributed to the Fund by the person; and

(b) interest on the amounts contributed to the Fund by the person to the end of the month in which the person died or the last survivor allowance was payable, whichever is later, calculated in accordance with subsection (4),

reduced by an amount equal to,

(c) the amount of the allowance, if any, paid under this Act to the person;

(d) the amount of the survivor allowances, if any, paid under this Act consequent upon the death of the person; and

(e) interest on the amounts of the allowance and survivor allowances to the end of the month in which the person died or the last survivor allowance was payable, whichever is later, calculated in accordance with subsection (5).

(4) Interest under subsection (3) shall be computed and credited to the person as at the 31st day of December in each year at the Fund rate for the year of contributions credited to the person for the year and on the accumulated balance of contributions at the end of the preceding year. Interest calculation

(5) Interest under subsection (3) on the amounts of the allowances paid to the person or consequent upon the death of the person shall be calculated as at the 31st day of December in each year at the Fund rate for the year on the accumulated balance of payments for the year and on the accumulated balance of payments at the end of the preceding year. R.S.O. 1980, c. 494, ss. 56, 57, 59. Idem

TRANSFERS

48. A person who has taken a refund of contributions from the Fund and who becomes, in respect of a period of twenty or more days in a school year, a contributor to a pension plan in respect of which there is a reciprocal agreement in force under this Act that permits service under this Act to be taken into account for the purposes of the calculation of a benefit upon the transfer of funds from the Fund may be rein- Reinstatement for purpose of transfer of credits

stated in the Fund without being employed in education upon payment into the Fund of the amount required under section 46, but the reinstatement shall be for the purpose only of a transfer of credits under the reciprocal agreement. *New*.

Transfer agreements

49. Subject to the approval of the Lieutenant Governor in Council, the Commission may enter into agreements with the authorized representatives of any other pension fund respecting the terms and conditions upon which persons may transfer to or from the Fund from or to the other pension fund. R.S.O. 1980, c. 494, s. 62.

SUPERANNUATION ADJUSTMENT BENEFITS

Superannuation Adjustment Fund R.S.O. 1980, c. 490

50.—(1) The employer of a person employed in education shall deduct the person's contributions under the *Superannuation Adjustment Benefits Act* from the person's salary and shall deliver to the Commission or deposit in the Commission bank account the employee's contributions under that Act at the same times as the employer is required to deliver or deposit amounts deducted as contributions to the Fund.

Interest

(2) Interest is payable by the employer to the Commission on each contribution due under subsection (1) from the date the contribution is due to the date the contribution is delivered or deposited in accordance with subsection (1).

Interest rate

(3) The rate at which the interest is payable is the same as the rate payable on contributions to the Fund that are delivered or deposited after the date on which the contributions are due. R.S.O. 1980, c. 494, s. 25 (7).

Contributions by Ontario to Superannuation Adjustment Fund

51.—(1) For the purpose of contributing the amount required by clause 8 (1) (b) of the *Superannuation Adjustment Benefits Act*, within the month following the month in which employees' contributions are delivered to the Commission or deposited in the Commission bank account there shall be transferred to the account maintained in relation to this Act under the Superannuation Adjustment Fund Account out of the Consolidated Revenue Fund an amount equal to the employees' contributions to the Superannuation Adjustment Fund received in the month by the Commission.

Exceptions

(2) Subsection (1) does not apply in respect of contributions by persons employed in education within the meaning of subclause 1 (1) (j) (v), (vi) or (ix). *New*.

Payment of superannuation adjustment benefits

52.—(1) The Commission shall pay to the persons entitled thereto the superannuation adjustment benefits payable under the *Superannuation Adjustment Benefits Act* related to this Act.

Source of moneys

(2) The Commission shall make the payments under subsection (1) out of the moneys paid to the Commission under section 50.

Additional moneys

(3) Where the moneys mentioned in subsection (2) are insufficient to enable the Commission to make the payments under subsection (1), the Commission shall certify to the Treasurer the amount required to make the payments and the Treasurer shall transfer the amount to the Commission out of the credit balance in the account maintained in relation to this Act under the Superannuation Adjustment Fund Account.

Surplus funds

(4) Not later than the end of each month, the Commission shall transfer to the Treasurer for the account maintained in relation to this Act under the Superannuation Adjustment Fund Account any funds received by the Commission during the preceding month as contributions under the *Superannuation Adjustment Benefits Act*, or as interest on such contributions, that are surplus to the requirements of the Commission in relation to the payment of benefits under that Act.

R.S.O. 1980, c. 490

Purpose of subss. (1-4)

(5) The purpose of subsections (1) to (4) is to provide for the administration of the *Superannuation Adjustment Benefits Act* in relation to persons employed in education and persons entitled to allowances under this Act. *New.*

Determination as to employment

53. For the purposes of section 6 of the *Superannuation Adjustment Benefits Act*, a person's employment in education in a school year, for less than the number of days prescribed by the regulations, after the person ceases to be employed in education and before the person commences to receive a superannuation allowance under this Act shall not be taken into account in determining the year in which the person ceases to be employed in education. *New.*

Accounts as to superannuation adjustments

54.—(1) The Commission shall maintain accounts in which shall be entered all receipts and disbursements by the Commission in respect of the *Superannuation Adjustment Benefits Act*.

Audit of accounts

(2) The accounts mentioned in subsection (1) shall be audited by the Provincial Auditor or by such other auditor as the Lieutenant Governor in Council appoints.

Report

(3) The auditor shall make an annual report, and shall prepare and furnish to the Treasurer such statements and reports as are required by the Treasurer. *New*.

TEACHERS' SUPERANNUATION COMMISSION

Commission

55.—(1) The Teachers' Superannuation Commission is continued.

Composition

(2) The Commission shall be composed of,

(a) five persons who shall be appointed by the Minister; and

(b) five persons employed in education each elected by the members of one of the teacher organizations prescribed by the regulations who are contributors to the Fund.

Election of members

(3) The elections mentioned in clause (2) (b) shall be conducted by secret ballot and in accordance with such procedures as are determined by The Ontario Teachers' Federation.

Chairman, transitional

(4) The person holding the office of chairman of the Commission on the day this Act comes into force shall continue to hold office until the end of the year in which this Act comes into force and until his successor is elected.

Election of chairman by elected members

(5) In the year next following the year in which this Act comes into force and in every second year thereafter, the members of the Commission mentioned in clause (2) (b) shall elect from among them a person who shall be the chairman of the Commission for the year and until the person's successor as chairman is elected.

Election of chairman by appointed members

(6) In the second year following the year in which this Act comes into force and in every second year thereafter, the members of the Commission mentioned in clause (2) (a) shall elect from among them a person who shall be the chairman of the Commission for the year and until the person's successor as chairman is elected.

Vacancy in office of chairman

(7) If in any year a vacancy occurs in the office of chairman of the Commission, the members of the Commission whose duty it was to elect a chairman for the year shall elect from among them a person who shall be the chairman of the Commission for the remainder of the year and until the person's successor as chairman is elected.

(8) If in any year the members of the Commission fail to elect the chairman, the Minister shall appoint the chairman from among the members eligible for election as chairman in the year. Where members fail to elect chairman

(9) When a vacancy occurs among the members, another member shall be appointed by the Minister or by the governing body of the teachers' organization concerned, as the case may be, as soon as is practicable after the vacancy occurs, and the person so appointed shall hold office for the unexpired portion of the term of the member replaced. Vacancy among members

(10) Each member is eligible for reappointment or re-election, as the case may be. Reappointment or re-election

(11) Each member shall hold office for three years and until a successor is appointed or elected. Term of office

(12) The Commission shall meet in the offices of the Commission at such times as the Commission may determine. Meetings

(13) Seven members constitute a quorum. R.S.O. 1980, c. 494, s. 2. Quorum

(14) Each member of the Commission, including the chairman, is entitled to vote on a matter before the Commission, and where the number of votes in favour of a motion before the Commission and the number of votes against the motion are equal, the motion is defeated. Voting

(15) No action or other proceeding for damages shall be commenced or continued against an employee of the Commission for an act or omission in good faith in the course of employment or against a member of the Commission for an act done in good faith in the execution or intended execution of a power or duty under this Act or the regulations or for an alleged neglect or default in the execution of such a power or duty. *New*. Liability

56.—(1) Subject to the approval of the Lieutenant Governor in Council, the Commission may, Property

(a) in its own name acquire by purchase, lease, or otherwise and hold any real property or any interest therein necessary for its actual use and occupation; and

(b) when no longer so necessary, sell or otherwise dispose of any of such property and pay the proceeds thereof into the Fund.

Expenditures re property

(2) Any expenditure incurred by the Commission in connection with any property acquired under subsection (1) shall be deemed to be an administration expense.

Rights re property

(3) The Commission may in its own name contract and be contracted with and sue and be sued.

Crown agency for purposes of R.S.O.1980, c. 106 1983, c. 6

(4) The Commission shall be deemed to be a Crown agency to which the *Crown Agency Act* applies for the purposes of the *Construction Lien Act, 1983*. R.S.O. 1980, c. 494, s. 3.

Documents

57. Where any document is required to be executed by the Commission, it is sufficient if the document is signed in the name of the Commission by any two of,

(a) the chairman of the Commission;

(b) a member of the Commission designated by the Commission for the purpose;

(c) the director of the Commission. R.S.O. 1980, c. 494, s. 4.

Explanations to contributors R.S.O. 1980, c. 373

58. The Commission shall continue to provide to each contributor to the Fund the explanations required to be provided to contributors to the Fund by the *Pension Benefits Act*. R.S.O. 1980, c. 494, s. 5.

Duty of Commission.

59. It is the duty of the Commission to manage the affairs of the Commission, to administer this Act and to advise the Minister on matters related to the affairs of the Commission or the administration of this Act. R.S.O. 1980, c. 494, s. 6.

Staff

60.—(1) Subject to the approval of the Lieutenant Governor in Council, the Commission may,

(a) establish job classifications, salary ranges, and the terms and conditions of employment for its employees; and

(b) appoint a director, an actuary, a solicitor, a medical referee, and such other employees as are considered proper.

Salaries

(2) The employees of the Commission shall be paid out of the Fund.

(3) The *Public Service Superannuation Act* applies to the employees of the Commission as though the Commission had been designated by the Lieutenant Governor in Council under section 28 of that Act. R.S.O. 1980, c. 494, s. 7. Application of R.S.O.1980, c. 419

61. The Commission shall not appoint a person as the actuary of the Commission unless the person is a Fellow of the Canadian Institute of Actuaries. R.S.O. 1980, c. 494, s. 1 (1) (a). Actuary

62. The period from and including the 1st day of January to and including the 31st day of December constitutes the fiscal year of the Commission. R.S.O. 1980, c. 494, s. 14. Fiscal year of Commission

63.—(1) The Commission shall annually, after the end of its fiscal year, file with the Minister a report upon the affairs and finances of the Commission. Annual report

(2) The Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. R.S.O. 1980, c. 494, s. 17. Idem

TEACHERS' SUPERANNUATION FUND

64.—(1) The Teachers' Superannuation Fund is continued. Fund

(2) The Treasurer is the custodian of the Fund. Custodian

(3) The actuary of the Commission shall make an actuarial valuation of the Fund as of the end of each third year in accordance with the *Pension Benefits Act* and the regulations under that Act and, when directed to do so by the Minister, at any other time. R.S.O. 1980, c. 494, s. 8. Actuarial valuations

R.S.O. 1980, c. 373

65. The Commission may receive any gift, devise, or bequest made to or for the purposes of the Fund and shall pay it or the proceeds thereof into the Fund to be applied as directed by the donor, and, if so directed, in additional benefits to those provided by this Act or, in the absence of such a direction, to the general purposes of the Fund. R.S.O. 1980, c. 494, s. 9. Gifts to Fund

66.—(1) All securities belonging to the Fund shall be deposited with the Treasurer. Securities

(2) The Treasurer is responsible for the safekeeping of all securities deposited under subsection (1). R.S.O. 1980, c. 494, s. 11. Safekeeping of securities

Accounts

67. Accounts shall be kept in which shall be entered all assets and liabilities and payments into and disbursements out of the Fund. R.S.O. 1980, c. 494, s. 13.

Interest

68. Except where otherwise specifically provided by this Act,

(a) interest payable under this Act or the regulations shall be at the rate of 6 per cent per year, compounded half-yearly; and

(b) interest is payable on any payment into or out of the Fund, other than an allowance, that is thirty days or more in arrears. R.S.O. 1980, c. 494, s. 15.

Audit

69.—(1) The accounts of the Fund shall be audited and the securities in which the moneys of the Fund may be invested shall be examined and checked in each fiscal year of the Commission by the Provincial Auditor or by such other auditor as the Lieutenant Governor in Council appoints, and the auditor shall make an annual report, and shall prepare and furnish to the Treasurer such statements and reports as are required by the Treasurer.

Cost of audit

(2) The cost of the audits and reports shall be paid by the Commission out of the Fund. R.S.O. 1980, c. 494, s. 16.

Payments into Fund

70. An account shall be kept in a chartered bank of Canada in the name of the Treasurer as custodian of the Fund, and every amount received as a payment into the Fund shall be deposited to the credit of such account. R.S.O. 1980, c. 494, s. 18.

Payments out of Fund

71.—(1) Every allowance, every refund, and the expenses of the administration of this Act, are payable out of the Fund.

Method of payment

(2) Every payment out of the Fund shall be made,

(a) by cheque of the Commission signed by; or

(b) by a direct transfer into the payee's account in a chartered bank or other institution entitled to receive money on deposit, pursuant to an arrangement authorized by the signatures of,

any two of, the chairman of the Commission, a member of the Commission designated by the Commission for the purpose, or the director of the Commission, and any such signature may be affixed in facsimile by use of a rubber stamp or by printing,

lithographing, engraving or other means. R.S.O. 1980, c. 494, s. 19 (1,2).

Province of Ontario debentures

72.—(1) The Treasurer shall issue from time to time a Province of Ontario debenture for the amount of funds accumulated to the credit of the Fund and not required for current expenditures.

Treasurer to determine rate and term

(2) The Treasurer, in consultation with the Commission and subject to the approval of the Lieutenant Governor in Council, shall determine in accordance with subsections (3) and (4) the rate and term of a debenture issued under subsection (1).

Rate

(3) A debenture issued under subsection (1) shall bear interest payable half-yearly at a rate based on the Canadian secondary market when the debenture is issued for Ontario securities, securities guaranteed by Ontario and other similar securities, or any of them, with a term corresponding to the term of the debenture.

Term

(4) The term of a debenture issued under subsection (1) shall be not less than twenty years and not more than twenty-five years.

Charge on Consolidated Revenue Fund

(5) A debenture issued under subsection (1) is a charge upon the Consolidated Revenue Fund. R.S.O. 1980, c. 494, s. 10.

Bank loans

73.—(1) The Treasurer, as custodian of the Fund, may, at the request of the Minister, arrange for a chartered bank of Canada to advance to the Fund, by way of overdraft or otherwise, any amount required temporarily to provide for payments out of the Fund and may furnish securities of the Commission as security therefor, and every such advance shall be repaid within one year out of interest or contributions to the Fund, or both.

Short-term investments

(2) The Treasurer, as custodian of the Fund, may at the request of the Minister, when both the Treasurer and the Minister consider it advisable for the sound and efficient management of the Fund, invest and authorize the Commission to invest any part of the Fund for any period not exceeding twelve months in any securities in which the Treasurer may invest the public moneys of Ontario. R.S.O. 1980, c. 494, s. 20.

Payment of share of unfunded liability

74.—(1) Every designated organization or designated private school shall deliver to the Commission or deposit in the Commission bank account on or before the 31st day of December in each year an amount equal to the part of the increase in the unfunded liability of the Fund over the

unfunded liability base that is attributable to the designated private school or designated organization.

Interest

(2) Interest is payable by every designated organization or designated private school to the Commission on the amount payable under subsection (1) from the date the amount is due to the date the amount is delivered to the Commission or deposited in the Commission bank account.

Rate of interest

(3) The rate at which the interest is payable is the Bank of Canada rate in effect on the date the amount is due under subsection (1) plus 4 per cent. *New*.

GENERAL

Regulations

75.—(1) The Lieutenant Governor in Council may make regulations,

(a) prescribing any matter required or authorized by this Act to be, or referred to in this Act as, prescribed by the regulations;

(b) prescribing forms and providing for their use;

(c) prescribing the powers and duties of the officers of the Commission, or any of them;

(d) prescribing the form and manner in which and by whom the accounts and records of the Commission shall be kept;

(e) authorizing the Commission to require persons who are contributors to the Fund or persons who are receiving allowances under this Act, and boards, to furnish information to or for the use of the Commission and prescribing the form thereof;

R.S.O. 1980, c. 490

(f) respecting the administration of moneys held by the Commission for the Superannuation Adjustment Fund under the *Superannuation Adjustment Benefits Act*, including provision for administration fees to the Commission, audits, payments, transfers and temporary draws on the Fund;

(g) authorizing the Commission to enter into agreements with boards, designated organizations and designated private schools respecting the administration of supplementary benefit plans provided by the boards, designated organizations and designated private schools for their employees;

(h) prescribing the method of calculating the part of the increase in the unfunded liability of the Fund over the unfunded liability base that is attributable to each designated organization or designated private school;

(i) providing for and regulating the granting of credit in the Fund upon payment of contributions to the Fund by or on behalf of persons employed in education in respect of absence from duty,

(i) because of ill health,

(ii) because of pregnancy or the adoption of a child,

(iii) because of duties as jurors,

(iv) because of duties as members of the Legislative Assembly of Ontario, of the House of Commons of Canada, of the council of a municipality or of a local board as defined in the *Municipal Affairs Act*, R.S.O. 1980, c. 303

(v) in order to take a course of study approved by the Commission,

(vi) for a period of leave authorized by the employing board,

(vii) in order to travel for a purpose approved by the Commission, or

(viii) because of participation in a position-sharing scheme approved by the employer;

(j) providing for and regulating the granting of credit in the Fund upon payment of contributions to the Fund in respect of hiatuses in employment in education,

(i) because of ill health,

(ii) because of pregnancy or the adoption of a child,

(iii) because of duties as members of the Legislative Assembly of Ontario, of the House of Commons of Canada, of the council of a municipality or of a local board as defined in the *Municipal Affairs Act*,

(iv) in order to take a course of study approved by the Commission, or

(v) in order to travel for a purpose approved by the Commission;

(k) providing for and regulating the granting of credit in the Fund to a person employed in education or who was employed in education for prior or subsequent teaching or supervisory services performed in a part of Canada or the Commonwealth other than Ontario or in a school maintained by the Government of Canada for children of members of the Canadian Forces, for Indians or for inmates of penal institutions, prescribing the period of time or the method of determining the period of time for which the credit may be given, prescribing the amount or the method of determining the amount of the credit, limiting the purpose for which the credit may be used and prescribing the method of calculating the payment that must be made and the terms of payment to the Fund in order to obtain the credit;

(l) providing for and regulating the granting of credit in the Fund to a person employed in education in respect of prior employment in business or industry related to the employment in education, prescribing the period of time or the method of determining the period of time for which the credit may be given, prescribing the amount or the method of determining the amount of the credit, prescribing the method of calculating the payment that must be made and the terms of payment to the Fund in order to obtain the credit and defining "prior employment in business or industry" for the purpose;

(m) respecting the transfer of moneys to or from the Fund from or to another pension fund under an agreement approved by the Lieutenant Governor in Council under this Act, including the credits or the methods of calculating credits in the Fund and the additional contributions that may be made to the Fund in relation to such transfers;

(n) providing for and regulating the granting of credit in the Fund for periods of teaching or supervisory service performed, with the approval of the Minister of Education, in a jurisdiction other than Ontario, and prescribing conditions in respect of the giving of such credit, prescribing the amount or the method of cal-

culating the amount of the credit and prescribing the method of calculating the payment that must be made and the terms of payment to the Fund in order to obtain the credit;

(o) prescribing the method of calculating the periods of time for which credits will be given in the Fund to teachers in designated private schools for past teaching service and prescribing the method of calculating the payment that must be made and the terms of payment to the Fund in order to obtain the credit;

(p) prescribing the conditions under which persons in receipt of allowances under this Act may become employed in education and continue to receive allowances under this Act and providing for reductions in the allowances;

(q) defining "active service", providing for credit in the Fund in respect of active service, and prescribing the terms and conditions upon which the credit may be given, the method of calculating the period for which the credit may be given, the method of calculating the amount of the credit and prescribing the method of calculating the payment that must be made and the terms of payment to the Fund in order to obtain the credit;

(r) respecting persons employed in schools whose board or teachers, or both, are reported by the Minister to the Commission as having failed to comply with this Act or the regulations or with an Act or regulation administered by the Ministry of Education including,

(i) the terms and conditions upon which contributions shall be made to the Fund, and

(ii) the credit to be given to such persons in respect of the period of non-compliance;

(s) prescribing the conditions under which a refund may be made to a person who establishes credit in the Fund under the regulations or who pays money into the Fund under the regulations for the purpose of establishing credit, and prescribing the method of determining the amount of the refund. R.S.O.1980, c. 494, s. 63.

Transitional

(2) A regulation made under clause (1) (i) or (l) may authorize the granting of credit in the Fund in respect of absence from

duty because of participation in a position-sharing scheme approved by the employer or in respect of prior employment in business or industry related to employment in education by persons who ceased to be employed in education on or after the 31st day of May, 1982 and before the 1st day of September, 1984. *New.*

Where employment ceased before May 31st, 1982

76.—(1) Except as provided in subsection (2), the *Teachers' Superannuation Act*, being chapter 494 of the Revised Statutes of Ontario, 1980, continues to apply in respect of allowances related to persons who ceased to be employed within the meaning of that Act before the 1st day of September, 1984.

Transitional

(2) Instalments payable on or after the 1st day of September, 1984 for allowances payable to persons who ceased to be employed in education on or after the 31st day of May, 1982 and before the 1st day of September, 1984 shall be computed and paid in amounts equal to the amounts that would have been paid if this Act had come into force on the 31st day of May, 1982. *New.*

Recommencement of allowance to widow or widower

77.—(1) A person whose allowance under section 36 of the *Teachers' Superannuation Act*, being chapter 494 of the Revised Statutes of Ontario, 1980, as the widow or widower of an individual who died with credit in the Fund for ten or more years of service or while in receipt of an allowance under that Act, was terminated by the person's remarriage before the coming into force of this Act, is entitled, upon making an application signed by the person, to have the allowance recommence as of the first day of the month next following the month in which this Act comes into force.

Computation

(2) An allowance mentioned in subsection (1) shall be recommenced in an amount equal to the amount that would have been paid to the person on the first day of the month next following the month in which this Act comes into force if the allowance had not been terminated by the person's remarriage.

Continuation of allowance to child or children

(3) Where an allowance became payable under section 36 of the said Act to the child or children of an individual mentioned in subsection (1) upon the remarriage of the widow or widower of the individual before the coming into force of this Act, the child or children continue to be entitled to the allowance in the same manner as if this Act had not come into force and notwithstanding the recommencement of the allowance to the widow or widower of the individual. *New.*

Repeal

78.—(1) Section 10 of the *Teachers' Superannuation Act*, being chapter 494 of the Revised Statutes of Ontario, 1980, is repealed on the 1st day of April, 1984.

Idem

(2) The said *Teachers' Superannuation Act*, other than section 10, is repealed on the 1st day of September, 1984.

Commencement

79.—(1) This Act, except sections 1 to 52 and 54 to 76, comes into force on the day it receives Royal Assent.

Idem

(2) Section 72 comes into force on the 1st day of April, 1984.

Idem

(3) Sections 1 to 52, 54 to 71 and 73 to 76 come into force on the 1st day of September, 1984.

Short title

80. The short title of this Act is the *Teachers' Superannuation Act, 1983*.

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983



Bill 148

(Chapter 84
Statutes of Ontario, 1983)

An Act to revise the Teachers' Superannuation Act

The Hon. B. Stephenson
Minister of Education and Minister of Colleges and Universities

1st Reading	December 8th, 1983
2nd Reading	December 14th, 1983
3rd Reading	December 15th, 1983
Royal Assent	December 16th, 1983

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Bill 148 1983

An Act to revise the Teachers' Superannuation Act

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Interpretation

1.—(1) In this Act,

(a) "average salary", of a person, means the person's average salary for the five years during which the person's salary was highest;

(b) "Bank of Canada rate" means the rate of interest set by the Bank of Canada for loans by the Bank of Canada to the chartered banks, as published by the Bank of Canada;

R.S.O. 1980, c. 129

(c) "board" has the same meaning as in the *Education Act*;

R.S.O. 1980, c. 152

(d) "child" has the same meaning as in the *Family Law Reform Act*;

(e) "Commission" means Teachers' Superannuation Commission;

(f) "Commission bank account" means the account kept in a chartered bank of Canada under this Act in the name of the Treasurer as custodian of the Fund;

(g) "debenture rate", in relation to a fiscal year, means the weighted average of the rate of interest of the Province of Ontario debentures issued in the fiscal year under section 72;

(h) "designated organization" means an organization designated by the Lieutenant Governor in Council for the purpose of this Act and the regulations;

(i) "designated private school" means a school, college, academy or other educational institution designated by the Lieutenant Governor in Council as a private school for the purpose of this Act and the regulations;

(j) "employed in education" means engaged for any period,

(i) as a teacher in a school within the meaning of the *Education Act*, R.S.O. 1980, c. 129

(ii) as a teacher in a school or class prescribed by the regulations,

(iii) as a teacher in a school outside Ontario under a teacher exchange system authorized by the Minister of Education,

(iv) as a teacher by the minister of a ministry of the Government of Ontario,

(v) as a teacher on the staff of the faculty of education of an Ontario university,

(vi) as a teacher in a designated private school,

(vii) as an employee by a board or in the Ministry of Education,

(viii) by the Minister of Education or a board in any capacity prescribed by the regulations,

(ix) as an employee of a designated organization in a capacity prescribed by the regulations,

but no person shall be deemed to be employed in education who,

R.S.O. 1980, c. 129

(x) is not qualified as a teacher under the *Education Act* and the regulations under that Act,

(xi) is regularly engaged outside Ontario and who is performing services in Ontario under a teacher exchange system approved by the Minister of Education, or

(xii) is a contributor to a fund to which the Crown contributes except the Teachers' Superannuation Fund, the Superannuation Adjustment Fund and the *Canada Pension Plan*,

R.S. C. 1970, c. C-5

and "employment in education" has a corresponding meaning;

(k) "employer", in relation to a person employed in education, means employer in relation to the person's employment in education;

R.S.O. 1980, c. 291

(l) "fiscal year" has the same meaning as in the *Ministry of Treasury and Economics Act*;

(m) "Fund" means Teachers' Superannuation Fund;

(n) "Fund rate", in relation to a year, means the weighted average yield of the debentures held by the Fund as at the 31st day of December in the previous year;

(o) "Minister" means the member of the Executive Council to whom the administration of this Act is assigned;

(p) "regulations" means regulations made under this Act;

(q) "salary" means remuneration paid for services in employment in education, and includes a cost of living allowance paid in relation to the remuneration;

(r) "school year" means the period from and including the 1st day of September in one year to and including the 31st day of August in the next year;

R.S.O. 1980, c. 152

(s) "spouse" has the same meaning as in Part II of the *Family Law Reform Act*;

(t) "Treasurer" means Treasurer of Ontario and Minister of Economics;

(u) "unfunded liability base" means the unfunded liability of the Fund as of the 31st day of December, 1981 according to the 1981 Revised Valuation of the Fund by the actuary of the Commission;

(v) "unfunded liability of the Fund" means the amount by which the assets of the Fund are less than the liabilities of the Fund;

(w) "Year's Maximum Pensionable Earnings Average", of a person, means the average of the Year's Maximum Pensionable Earnings under the *Canada Pension Plan* of the year in which the person ceased to be employed in education and each of the two preceding years. R.S. C. 1970, c.C-5

Teacher

(2) Every person,

(a) to whom the Minister of Education has granted a certificate of qualification or a letter of standing; or

(b) in respect of whom the Minister of Education has granted a letter of permission to a board,

shall be deemed to be qualified as a teacher for the purposes of this Act so long as the certificate of qualification, letter of standing, or letter of permission granted in respect of the person remains valid. R.S.O. 1980, c. 494, s. 1.

Salary

(3) For the purposes of this Act, "salary" does not include remuneration for services other than services in employment in education, does not include payment of an amount for expenses (whether the amount is accountable or non-accountable), does not include a perquisite related to employment, does not include payment related to accumulated sick leave or other benefit credits, and does not include payment related to retirement or severance from employment, whether or not the remuneration, payment or perquisite is a term or condition of employment in education. R.S.O. 1980, c. 494, s. 24 (4, 5).

Credit for service

(4) For the purpose of computing the annual superannuation allowance or disability allowance to which a person is entitled under this Act, a person is entitled to a year of credit in the Fund for each school year, and to a proportionate part of a year of credit in the Fund for each part of a school year, for which contributions are made to the Fund by or on behalf of the person. R.S.O. 1980, c. 494, s. 29 (6).

Age of child attending school

(5) For the purpose of determining entitlement to a survivor allowance under this Act, a person who has attained the age of eighteen years but has not attained the age of twenty-five years and who is in full-time attendance at a school, college, university or other institution that is recognized by the Commission as a place of higher education, shall be deemed not to have attained the age of eighteen years. R.S.O. 1980, c. 494, s. 36 (5).

Vested interest in allowance

(6) For the purpose of determining entitlement to a survivor allowance related to an allowance under this Act, the person who, upon ceasing to be employed in education, is or would be entitled to the allowance under this Act has a vested interest in the allowance under this Act.

Bank of Canada rate

(7) For the purpose of establishing the Bank of Canada rate, the periodic publication entitled the Bank of Canada Review purporting to be published by the Bank of Canada is admissible in evidence as conclusive proof of the Bank of Canada rate as set out therein, without further proof of the authenticity of the publication. *New*.

CONTRIBUTIONS

Contribution rates R.S.C. 1970, c. C-5

2.—(1) Every person employed in education who contributes under the *Canada Pension Plan* shall contribute to the Fund from the salary paid to the person for the calendar year,

(a) 6.9 per cent of the part thereof below the Year's Basic Exemption as prescribed by the *Canada Pension Plan*;

(b) 5.1 per cent of the part thereof between the Year's Basic Exemption and the Year's Maximum Pensionable Earnings as prescribed by the *Canada Pension Plan*; and

(c) 6.9 per cent of the part thereof in excess of the Year's Maximum Pensionable Earnings.

Idem

(2) Every person employed in education who does not contribute under the *Canada Pension Plan* shall contribute to the Fund 6.9 per cent of salary.

Salaries under $10,000

(3) Where the annual rate of salary is less than $10,000, it shall, for the purposes of this section, be deemed to be at the annual rate of $10,000. R.S.O. 1980, c. 494, s. 24 (1-3).

Exception

(4) Subsections (1) and (2) do not apply to a person in a designated private school or a designated organization who elects

in accordance with this Act to be excluded from the benefits and obligations of this Act. *New*.

Interpretation

3.—(1) In this section, "due date", in relation to a contribution, means the date on which the employer is required by subsection (3) to deliver the contribution to the Commission.

Deductions by employer

(2) The employer of a person employed in education shall deduct the amount the person is required to contribute to the Fund from the salary paid to the person.

Transfer of contribution

(3) The employer, on or before but not later than the last day of each month in which the salary is paid, shall deliver to the Commission, the amount deducted or shall deposit the amount deducted in the Commission bank account.

Interest

(4) Interest is payable by the employer to the Commission on the amount of each contribution due under subsection (3) from the date the contribution is due to the date the contribution is delivered to the Commission or deposited in the Commission bank account.

Rate of interest

(5) The rate at which the interest is payable is the Bank of Canada rate in effect on the date the contribution is due under subsection (3) plus 4 per cent.

Compound interest

(6) Interest payable under subsection (4) shall be compounded annually on the anniversary of the due date of the contribution in respect of which the interest is payable.

Reports

(7) Every employer of persons employed in education shall report to the Commission from time to time as required by the Commission in respect of contributions deducted. R.S.O. 1980, c. 494, s. 25 (1-4).

Interpretation

4.—(1) In this section, "agreement" means agreement to provide an income in the event of a long term disability to a person who contributes to the Fund.

Long term disability income plans

R.S.O. 1980, cc. 464, 218

(2) An agreement between the Minister of Education, a board, the Ontario Teachers' Federation, an affiliate as defined in the *School Boards and Teachers Collective Negotiations Act* or any other authority approved by the Commission and an insurer within the meaning of the *Insurance Act* is not effective for the purposes of this Act unless approved by the Commission.

Recipient's contributions

(3) The Commission shall accept a contribution made by the insurer or by the employer or former employer, as the case may be, in accordance with an agreement approved by the Commis-

sion on behalf of a person who contributes to the Fund for each month in respect of which the person receives a payment under the agreement where the contribution by the insurer or employer is made on or before the fifteenth day of the month next following the payment, except where the person has attained the age of sixty-five years or is in receipt of an allowance from the Fund and the contributions shall, subject to subsection (5), be 6.9 per cent of the annual rate of salary paid to the person immediately before the cessation of the person's employment in education.

Idem

(4) Where a person who is employed in education qualifies or has qualified for a benefit in respect of a disability incurred on or after the 1st day of July, 1974 under a long term income protection plan established under the *Public Service Act*, R.S.O. 1980, c. 418 whether or not the person is in receipt of the benefit, a contribution of 6.9 per cent of the salary of the person in the month next preceding the month in which the person qualifies or qualified for the benefit shall be made to the Fund on behalf of the person out of moneys appropriated therefor by the Legislature for each month or part of a month for which the person continues to qualify for the benefit, and the person shall be given credit in the Fund for the period of time for which the contribution is made.

Adjustment in line with cost of living

(5) Where an agreement approved by the Commission provides for payments to vary in amount from time to time in accordance with the cost of living, the amount of a contribution accepted by the Commission under subsection (3) shall be increased or decreased, without limitation, in proportion to the increase or decrease in the cost of living.

Adjustments not provided for in agreement

(6) An additional contribution may be made to the Fund by or for a person mentioned in subsection (1) under an agreement approved by the Commission that does not provide for payments to vary from time to time in accordance with the cost of living.

Amount of additional contribution

(7) The amount of an additional contribution under subsection (6) shall be equal to 6.9 per cent of the amount of the increase in the annual rate of salary that would be paid to the person if the annual rate of salary were increased in each year after the person ceased to be employed in education in the same manner as a pension would be increased in each year under the *Superannuation Adjustment Benefits Act* R.S.O. 1980, c. 490 without adjustment to reduce or increase the Consumer Price Index ratio determined under that Act.

Application of additional contributions

(8) An additional contribution under subsection (6) may be made in any year after the first year of contribution but applies

only in respect of the year in which the contribution is made. R.S.O. 1980, c. 494, s. 39.

Contributions by Province

5.—(1) The Treasurer shall deposit in the Commission bank account on the 1st day of January in each year from the Consolidated Revenue Fund an amount equal to the contributions made to the Fund during the year before the preceding year by or on behalf of persons employed in education.

Exceptions

(2) Subsection (1) does not apply in respect of a person employed in education within the meaning of subclause 1 (1) (j) (v), (vi) or (ix).

Idem

(3) Subsection (1) does not apply in respect of persons who under the regulations are themselves required to pay a sum in lieu of the sum that would otherwise be paid by the Treasurer under subsection (1). R.S.O. 1980, c. 494, s. 26 (1, 2), *part*.

Amounts related to contributions under long term disability agreements

(4) Subsection (1) applies in respect of contributions made to the Fund in accordance with section 4 (which relates to long term disability agreements). R.S.O. 1980, c. 494, s. 39 (4).

Interest payable by Treasurer

6.—(1) The Treasurer shall pay interest on the sums placed to the credit of the Fund by the Treasurer under section 5 at the debenture rate for the fiscal year next preceding the fiscal year in which the sum is placed to the credit of the Fund.

Term

(2) The interest on a sum mentioned in subsection (1) is payable from the 1st day of June in the fiscal year preceding the fiscal year in which the sum is placed to the credit of the Fund to the date that the sum is placed to the credit of the Fund. R.S.O. 1980, c. 494, s. 27.

Contributions by certain organizations

7.—(1) An organization that employs a person mentioned in subsection 5 (2), on or before the last day of each month in which the organization pays salary to the person for employment in education, shall deliver to the Commission or shall deposit in the Commission bank account an amount equal to the contributions made to the Fund by or on behalf of the persons employed in education by the organization.

Interest payable by organization

(2) Interest is payable by the organization to the Commission on amounts mentioned in subsection (1) at the same rate and for the same period of time mentioned in section 3. R.S.O. 1980, c. 494, s. 26 (2) (b).

Deficiency

8. When the payments into the Fund in any year are insufficient to make the required payments out of the Fund, the deficiency shall be made up out of the Consolidated Revenue Fund. R.S.O. 1980, c. 494, s. 12.

Private schools

9.—(1) The Lieutenant Governor in Council by order may designate a school, college, academy or other educational institution that meets the criteria set out in subsection (3) as a private school for the purpose of this Act and the regulations.

Effective date of designation

(2) A designation under subsection (1) comes into force on the 1st day of September next following the designation.

Criteria

(3) The criteria referred to in subsection (1) are that the school, college, academy or other educational institution,

(a) is giving instruction equivalent to that given in elementary schools or secondary schools in Ontario;

(b) is not operated for profit or gain and the profits, if any, are used to carry out its objects;

(c) is not supported in any way by school taxes or by provincial or municipal grants; and

(d) by its governing body, undertakes in writing,

(i) to make such annual reports to the Commission as the Commission may require for the purpose of the administration of this Act and to supply such information as to its constitution, operations, teaching staff and otherwise as the Commission may require,

(ii) to pay monthly to the Commission, for those persons on its teaching staff who are contributors to the Fund, the moneys that an employer of persons employed in education is required by this Act to deduct and deliver to the Commission, together with a sum calculated thereon at a rate equal to the rate according to which the Treasurer places sums, related to the moneys that employers of persons employed in education deduct and deliver to the Commission, to the credit of the Fund under this Act, and

(iii) to perform any administrative functions necessary as an employer for the administration of this Act and the regulations.

Qualifications of teacher R.S.O. 1980, c. 129

(4) A teacher in a designated private school may establish credit in the Fund under this section only in respect of teaching service rendered while qualified as a teacher under the *Education Act* and the regulations under that Act.

Nature of teaching service

(5) A teacher in a designated private school may establish credit in the Fund under this section only in respect of teaching service equivalent to that given in elementary schools or secondary schools in Ontario.

Past teaching service

(6) A teacher in a designated private school who has established credit in the Fund under this section is entitled to establish credit in the Fund in respect of past teaching service in a designated private school in accordance with the regulations, to re-establish credit in the Fund in respect of past teaching service in any other school in accordance with this Act and to establish credit in the Fund in respect of active service in accordance with the regulations.

Value of board or lodging as part of salary

(7) The salary of a teacher who contributes to the Fund in relation to employment in a designated private school and who receives board or lodging related to employment by a designated private school shall be deemed to be such amount, having regard for the board or lodging, as is determined by the Commission.

Exception

(8) A person who is a teacher in a school, college, academy or other educational institution on the date it is designated under subsection (1) may elect to be excluded from the benefits and obligations of this Act while employed in a designated private school.

Idem, notice

(9) An election under subsection (8) is not effective unless given in writing to the governing body of the designated private school and to the Commission,

(a) where the person is qualified as a teacher under the *Education Act* and the regulations under that Act when the designation becomes effective, not later than three months after the date when the designation becomes effective; or

(b) where the person becomes qualified as a teacher under the *Education Act* and the regulations under that Act after the date when the designation becomes effective, not later than three months after the person becomes so qualified.

Termination of designation

(10) Upon the recommendation of the Minister, the Lieutenant Governor in Council by order may terminate the designation of a designated private school.

Grounds

(11) The Minister may recommend the termination of a designation where,

(a) the designated private school, by its governing body, has requested the termination of the designation;

(b) the designated private school is not complying with this Act; or

(c) there is a change in the objects or mode of carrying out the objects of the designated private school.

Notice and submissions

(12) Before recommending the termination of the designation of a designated private school, the Minister shall give notice of the proposed recommendation to the governing body of the designated private school and to the employees of the designated private school who are employed in education and shall receive and consider the written submissions, if any, made within a reasonable time by the governing body and the employees of the designated private school.

Effective date

(13) An order by the Lieutenant Governor in Council terminating the designation of a designated private school is effective the 31st day of August next following the date of the order.

Effect of termination of designation

(14) Upon the termination of the designation of a designated private school, the persons who are teachers in the school, college, academy or other educational institution shall, for the purposes of this Act, be deemed to cease to be employed in education. R.S.O. 1980, c. 494, s. 21.

Organizations

10.—(1) The Lieutenant Governor in Council by order may designate an organization that meets the criteria set out in subsection (3) as an organization for the purpose of this Act and the regulations.

Effective date of designation

(2) A designation under subsection (1) comes into force on the 1st day of September next following the designation.

Criteria

(3) The criteria referred to in subsection (1) are that the organization,

(a) provides services related to elementary or secondary education;

(b) is not operated for profit or gain and the profits, if any, are used to carry out its objects; and

(c) by its governing body, undertakes in writing,

(i) to make such annual reports to the Commission as the Commission may require for the purpose of the administration of this Act and to supply such information as to its constitution, operations, teaching staff and otherwise as the Commission may require,

(ii) to pay monthly to the Commission, for those of its employees who are contributors to the Fund, the moneys that an employer of persons employed in education is required by this Act to deduct and deliver to the Commission, together with a sum calculated thereon at a rate equal to the rate according to which the Treasurer places sums, related to the moneys that employers of persons employed in education deduct and deliver to the Commission, to the credit of the Fund under this Act, and

(iii) to perform any administrative functions necessary as an employer for the administration of this Act and the regulations.

Qualifications for credit

(4) A person employed by a designated organization in a capacity prescribed by the regulations may establish credit in the Fund under this section only in respect of employment while qualified as a teacher under the *Education Act* and the regulations under that Act.

R.S.O. 1980, c. 129

Past employment

(5) A person who is employed by a designated organization in a capacity prescribed by the regulations and who establishes credit in the Fund under this section is entitled to establish credit in the Fund in respect of past employment by a designated organization in a capacity prescribed by the regulations and to establish credit in the Fund in respect of active service in accordance with the regulations.

Value of board or lodging as part of salary

(6) The salary of a person who contributes to the Fund in relation to employment by a designated organization and who receives board or lodging related to employment by a designated organization shall be deemed to be such amount, having regard for the value of the board or lodging, as is determined by the Commission.

Exception

(7) A person who is employed by an organization on the date it is designated under subsection (1) may elect to be excluded from the benefits and obligations of this Act while employed by a designated organization.

Idem, notice

(8) An election under subsection (7) is not effective unless given in writing to the governing body of the designated organization and to the Commission,

R.S.O. 1980, c. 129

(a) where the person is qualified as a teacher under the *Education Act* and the regulations under that Act when the designation becomes effective, not later than three months after the date when the designation becomes effective;

(b) where the person becomes qualified as a teacher under the *Education Act* and the regulations under that Act after the date when the designation becomes effective, not later than three months after the person becomes so qualified.

Termination of designation

(9) Upon the recommendation of the Minister, the Lieutenant Governor in Council by order may terminate the designation of a designated organization.

Grounds

(10) The Minister may recommend the termination of a designation where,

(a) the designated organization, by its governing body, has requested the termination of the designation;

(b) the designated organization is not complying with this Act; or

(c) there is a change in the objects or mode of carrying out the objects of the designated organization.

Notice and submissions

(11) Before recommending the termination of the designation of a designated organization, the Minister shall give notice of the proposed recommendation to the governing body of the designated organization and to the employees of the designated organization who are employed in education and shall receive and consider the written submissions, if any, made within a reasonable time by the governing body and the employees of the designated organization.

Effective date

(12) An order by the Lieutenant Governor in Council terminating the designation of a designated organization is effective the 31st day of August next following the date of the order.

(13) Upon the termination of the designation of a designated organization, the persons who are engaged by the organization shall, for the purposes of this Act, be deemed to cease to be employed in education. *New.* Effect of termination of designation

11. A person employed on the staff of a college of applied arts and technology who, under a predecessor of this Act, is deemed to be employed in education and, Colleges of applied arts and technology

(a) who continues to be employed full-time on the staff of a college of applied arts and technology on the date this section comes into force, shall be deemed to have continued to be and to continue to be employed in education in each school year in which the person was or is employed full-time on the staff of a college of applied arts and technology;

(b) who is employed part-time on the staff of a college of applied arts and technology on the date this section comes into force, shall be deemed to have continued to be and to continue to be employed in education in each school year in which the person was or is employed part-time or full-time on the staff of a college of applied arts and technology; or

(c) who changes from full-time to part-time employment on the staff of a college of applied arts and technology after the date this section comes into force, shall be deemed not to be employed in education as of the date on which the person ceases to be employed full-time on the staff of the college. *New.*

SUPERANNUATION ALLOWANCES

12.—(1) Every person who ceases to be employed in education and who has a number of years of credit in the Fund that, when added to the person's age on the date when the person ceases to be employed in education, totals at least ninety years is entitled to an annual superannuation allowance during the person's lifetime. R.S.O. 1980, c. 494, s. 28 (2). Allowance where years of credit plus age equal ninety

(2) The amount of the annual superannuation allowance to which a person is entitled under this section shall be computed as follows: Computation of allowance

1. Multiply an amount equal to 2 per cent of the average salary of the person by the number of years, not exceeding thirty-five, for which the person has credit in the Fund.

R.S.C. 1970, c. C-5

2. Where the person has contributed to the *Canada Pension Plan*, reduce the amount computed under paragraph 1 by an amount equal to 0.7 per cent of that part of the average salary of the person that does not exceed the Year's Maximum Pensionable Earnings Average of the person multiplied by the number of years, not exceeding thirty-five, for which the person has credit in the Fund after the year 1965.

3. Where the person ceased to be employed in education before attaining the age at which the person could become eligible for a benefit under the *Canada Pension Plan* or commences to receive a disability pension under the *Canada Pension Plan*, the reduction under paragraph 2 does not apply until the first day of the month next following the month in which the person attains such age. R.S.O. 1980, c. 494, s. 29.

Commencement of allowance

(3) An annual superannuation allowance under this section shall commence as of the first day of the month next following the month in which the person entitled to the allowance ceases to be employed in education. R.S.O. 1980, c. 494, s. 43 (1).

Allowance after ten or more years of credit

13.—(1) Every person who contributes to the Fund and who meets the qualifications set out in subsection (2) is entitled to an annual superannuation allowance during the person's lifetime.

Qualifications for allowance

(2) The qualifications for an annual superannuation allowance under this section are:

1. The person must have ten or more years of credit in the Fund.

2. The person must have ceased to be employed in education.

3. The number of years for which the person has credit in the Fund plus the person's age when the person ceases to be employed in education must total less than ninety years.

Computation of allowance

(3) The amount of an annual superannuation allowance under this section shall be computed as follows:

1. Multiply an amount equal to 2 per cent of the average salary of the person by the number of years, not exceeding thirty-five, for which the person has credit in the Fund.

2. Where the person has contributed to the *Canada Pension Plan*, reduce the amount computed under paragraph 1 by an amount equal to 0.7 per cent of that part of the average salary of the person that does not exceed the Year's Maximum Pensionable Earnings Average of the person multiplied by the number of years, not exceeding thirty-five, for which the person has credit in the Fund after the year 1965. R.S.C. 1970, c. C-5

3. Where the person ceased to be employed in education before attaining the age at which the person could become eligible for a benefit under the *Canada Pension Plan* or commences to receive a disability pension under the *Canada Pension Plan*, the reduction under paragraph 2 does not apply until the first day of the month next following the month in which the person attains such age.

4. In the case of an allowance that is to commence before the first day of the month following the month in which the person attains the age of sixty-five years, reduce the amount computed under paragraphs 1 to 3 at the rate of 5 per cent times the lesser of,

   i. the number of years by which the person's age is less than sixty-five years on the date on which the allowance is to commence, or

   ii. ninety minus the sum of the number of years for which the person has credit in the Fund and the person's age on the date on which the allowance is to commence.

Commencement of allowance

(4) An annual superannuation allowance under this section shall commence, at the option of the person entitled to the allowance,

(a) on the first day of any month after the month in which the person attains the age of fifty-five years, if the person is not employed in education at the time the allowance is to commence; or

(b) as of the first day of the month next following the month in which the person entitled to the allowance attains the age of sixty-five years or, where the person is employed in education in the month in which the person attains the age of sixty-five years, on the first day of the month next following the month in

which the person ceases to be employed in education. R.S.O.1980, c. 494, s. 32.

Allowance after ten years of service but less than ten years of credit

14.—(1) Every person who contributes to the Fund and who meets the qualifications set out in subsection (2) is entitled to an annual superannuation allowance during the person's lifetime.

Qualifications for allowance

(2) The qualifications for an annual superannuation allowance under this section are:

1. The person must have credit in the Fund, but the credit must be for less than ten years.

2. The person must have ceased to be employed in education after attaining the age of forty-five years.

3. The person must have been in the service of the person's last employer for a continuous period of at least ten years.

Computation of allowance

(3) The amount of an annual superannuation allowance under this section shall be computed as follows:

1. Where the person has credit in the Fund for five or more years, multiply an amount equal to 2 per cent of the average salary of the person by the number of years for which the person has credit in the Fund.

2. Where the person has credit in the Fund for less than five years of service, multiply an amount equal to 2 per cent of the average salary of the person during the period of time for which the person has credit in the Fund by the number of years for which the person has credit in the Fund.

R.S.C. 1970, c. C-5

3. Where the person has contributed to the *Canada Pension Plan*, reduce the amount computed under paragraph 1 or 2 by an amount equal to 0.7 per cent of that part of the average salary of the person that does not exceed the Year's Maximum Pensionable Earnings Average of the person multiplied by the number of years for which the person has credit in the Fund after the year 1965.

4. Where the person ceased to be employed in education before attaining the age at which the person could become eligible for a benefit under the *Canada Pension Plan* or commences to receive a disability pension under the *Canada Pension Plan*, the reduc-

tion under paragraph 3 does not apply until the first day of the month next following the month in which the person attains such age.

5. In the case of an allowance that is to commence before the first day of the month following the month in which the person attains the age of sixty-five years, reduce the amount computed under paragraphs 1 to 4 at the rate of 5 per cent times the number of years by which the person's age is less than sixty-five years on the date on which the allowance is to commence.

Minimum allowances

(4) No increase in the amount of an allowance to a prescribed minimum amount applies to a superannuation allowance computed under this section or to a survivor allowance related to such a superannuation allowance.

Exceptions

(5) Subsection (4) does not apply if superannuation allowances under this section or, in the case of survivor allowances, survivor allowances related to such superannuation allowances, are specifically included in the prescribed minimum amounts.

Commencement of allowance

(6) An annual superannuation allowance under this section shall commence, at the option of the person entitled to the allowance,

(a) on the first day of any month after the month in which the person attains the age of fifty-five years, if the person is not employed in education at the time the allowance is to commence; or

(b) as of the first day of the month next following the month in which the person entitled to the allowance attains the age of sixty-five years or, where the person is employed in education in the month in which the person attains the age of sixty-five years, on the first day of the month next following the month in which the person ceases to be employed in education. *New*.

Reduced allowance upon re-employment in education

15.—(1) A person who is receiving a superannuation allowance under this Act and who again becomes employed in education for more than the number of days prescribed by the regulations is entitled to continue to receive the allowance while employed in education subject to the conditions and in a reduced amount calculated in the manner prescribed by the regulations.

Election

(2) A person mentioned in subsection (1) may elect to cease to receive the superannuation allowance while employed in education.

Notice of election

(3) An election under subsection (2) must be made by notice in writing delivered to the Commission.

Effect of not making election

(4) A person mentioned in subsection (1) who does not make an election under subsections (2) and (3) is not entitled, upon ceasing to be employed in education, to an adjustment of the superannuation allowance in respect of contributions or service for the period of employment in education unless the person pays to the Fund an amount equal to the total of the amounts of the superannuation allowance payments received by the person during the period the person was again employed in education together with interest on the amount of each of such superannuation allowance payment.

Interest on amounts repaid

(5) Interest under subsection (4) shall be computed on the amount of each superannuation allowance payment for the period from the date the payment was made out of the Fund to the date of repayment to the Fund at the debenture rate for the fiscal year at the date of re-employment in education. R.S.O. 1980, c. 494, s. 46 (1).

Resumption of superannuation allowance

16.—(1) Where a person ceases to receive a superannuation allowance under this Act because of re-employment in education and the re-employment in education is for less than two years, the person is entitled upon the cessation of the re-employment to the resumption of the superannuation allowance without adjustment of the amount of the allowance as if the election had not been made.

Application for allowance

(2) Where the re-employment in education is for two or more years, the person is entitled upon the cessation of the re-employment to apply for an allowance under this Act. R.S.O. 1980, c. 494, s. 47, *part*.

DISABILITY ALLOWANCES

Disability allowance to person incapable of further employment

17.—(1) Every person who,

(a) has credit in the Fund for ten or more years;

(b) while employed in education becomes mentally or physically incapacitated to a degree that in the opinion of the Commission renders the person incapable of further earning a livelihood;

(c) ceases to be employed in education before the end of the school year in which the person would attain the age of sixty-five years; and

(d) makes application within two years from the date upon which the person was last employed in education,

is entitled, subject to section 25, to an annual disability allowance during the person's lifetime.

Computation of allowance

(2) The amount of the annual disability allowance to which a person is entitled under this section shall be computed as follows:

1. Multiply an amount equal to 2 per cent of the average salary of the person by the number of years, not exceeding thirty-five, for which the person has credit in the Fund.

2. Where the person has contributed to the *Canada Pension Plan*, reduce the amount computed under paragraph 1 by an amount equal to 0.7 per cent of that part of the average salary of the person that does not exceed the Year's Maximum Pensionable Earnings Average of the person multiplied by the number of years, not exceeding thirty-five, for which the person has credit in the Fund after the year 1965. R.S.C. 1970, c. C-5

3. Where the person ceased to be employed in education before attaining the age at which the person could become eligible for a benefit under the *Canada Pension Plan* or commences to receive a disability pension under the *Canada Pension Plan*, the reduction under paragraph 2 does not apply until the first day of the month next following the month in which the person attains such age or commences to receive the disability pension. R.S.O. 1980, c. 494, s. 33.

Disability allowance to person incapable of further employment in education

18.—(1) Every person who,

(a) has credit in the Fund for ten or more years;

(b) while employed in education becomes mentally or physically incapacitated to a degree that in the opinion of the Commission renders the person incapable of being further employed in education;

(c) ceases to be employed in education before the end of the school year in which the person would attain the age of sixty-five years; and

(d) makes application within two years from the date upon which the person was last employed in education,

is entitled, subject to section 25, to an annual disability allowance during the person's lifetime.

Computation of allowance

(2) The amount of the annual disability allowance to which a person is entitled under this section shall be computed as follows:

1. Multiply an amount equal to 2 per cent of the average salary of the person by the number of years, not exceeding thirty-five, for which the person has credit in the Fund.

R.S.C. 1970, c. C-5

2. Where the person has contributed to the *Canada Pension Plan*, reduce the amount computed under paragraph 1 by an amount equal to 0.7 per cent of that part of the average salary of the person that does not exceed the Year's Maximum Pensionable Earnings Average of the person multiplied by the number of years, not exceeding thirty-five, for which the person has credit in the Fund after the year 1965.

3. Where the person ceased to be employed in education before attaining the age at which the person could become eligible for a benefit under the *Canada Pension Plan* or commences to receive a disability pension under the *Canada Pension Plan*, the reduction under paragraph 2 does not apply until the first day of the month next following the month in which the person attains such age or commences to receive the disability pension.

4. Reduce the amount computed under paragraphs 1 to 3 at the rate of 2½ per cent times the lesser of,

   i. the number of years by which the person's age is less than sixty-five years on the date on which the allowance is to commence, or

   ii. ninety minus the sum of the number of years for which the person has credit in the Fund and the person's age on the date on which the allowance is to commence,

to a maximum reduction of 25 per cent under this paragraph. R.S.O. 1980, c. 494, s. 34.

Change of disability status for purpose of survivor allowance

19. Where a person receiving an annual disability allowance under this Act related to incapability of being employed in education dies leaving a spouse or a child surviving, and provision was made for a special medical re-examination and no decision was made by the Commission on such re-examination before the person's death, the Commission may, if it is of the opinion having regard to the facts established at the date of the person's death that the person should have been receiving an annual disability allowance under this Act related to incapability of further earning a livelihood, recompute the disability allowance in accordance with this Act as of the date of death as a disability allowance under this Act related to incapability of further earning a livelihood for the purpose of the survivor allowance under this Act. R.S.O. 1980, c. 494, s. 37.

Proof of disability

20. No application for a disability allowance under this Act shall be considered by the Commission until the Commission has obtained,

(a) the certificate of a legally qualified medical practitioner designated by the Commission, certifying that while employed in education the applicant became mentally or physically incapacitated and indicating the nature and degree of the incapacitation; and

(b) the report of the medical referee of the Commission containing such recommendations as the medical referee considers proper with regard to the granting of an allowance to the applicant. R.S.O. 1980, c. 494, s. 41.

Commencement of disability allowance

21.—(1) A disability allowance under this Act shall commence as of the first day of the month next following the month in which the person entitled to the allowance ceases to be employed in education.

Idem

(2) Notwithstanding subsection (1), a disability allowance under this Act shall not commence as of a date earlier than one year before the date upon which the completed application for the allowance reaches the Commission. R.S.O. 1980, c. 494, s. 43 (1).

Effect of re-employment

22. A person who is receiving a disability allowance under section 17 and who becomes employed ceases to be entitled to the disability allowance. R.S.O. 1980, c. 494, s. 46 (2).

Effect of re-employment in education

23. A person who is receiving a disability allowance under section 18 and who becomes employed in education or employed as a teacher in a school or institution ceases to be entitled to the disability allowance until the person ceases to be so employed. R.S.O. 1980, c. 494, s. 46 (3).

Resumption of disability allowance

24.—(1) Where a person ceases to receive a disability allowance under this Act because of re-employment in education and the re-employment in education is for less than two years, the person is entitled upon the cessation of the re-employment to the resumption of the disability allowance without adjustment of the amount of the disability allowance.

Application for allowance

(2) Where the re-employment in education is for two or more years, the person is entitled upon the cessation of the re-employment to apply for an allowance under this Act. R.S.O. 1980, c. 494, s. 48.

Evidence of mental or physical condition

25.—(1) The Commission may at any time require a person who is receiving a disability allowance under this Act to furnish evidence, in such form as the Commission directs, of the person's mental or physical condition.

Failure to furnish evidence

(2) Where the person fails to furnish evidence that the person's mental or physical condition continues to be of a nature that entitles the person to receive the disability allowance, the Commission may terminate payment of the disability allowance.

Review by Commission

(3) Where the disability allowance was an allowance under section 17, the person may request the Commission to review the matter and the Commission shall make the review and may direct payment to the person of such disability allowance as the person is entitled to under this Act. R.S.O. 1980, c. 494, s. 49.

SURVIVOR ALLOWANCES

Survivor allowance to spouse of person receiving allowance

26.—(1) The spouse of a person who dies while receiving an allowance under this Act is entitled to an annual survivor allowance during the spouse's lifetime.

Amount of survivor allowance

(2) The amount of the annual survivor allowance under this section is,

(a) where the deceased person had attained the age of sixty-five years at the date of death, one-half of the allowance that the deceased person was receiving at the date of death; or

(b) where the deceased person had not attained the age of sixty-five years at the date of death, one-half of the allowance that the deceased person would have received as of the first day of the month next following the month in which the deceased person would have attained the age of sixty-five years.

Exception

(3) Subsections (1) and (2) do not apply to the surviving spouse of a deceased person if they became spouses after the date of the deceased person's last day of employment in education. R.S.O. 1980, c. 494, s. 36 (1, 2), *part*.

Survivor allowance to spouse of person with vested interest in allowance

27.—(1) The spouse of a person who dies with a vested interest in but before receiving an allowance under this Act is entitled to an annual survivor allowance during the spouse's lifetime.

Amount of survivor allowance

(2) The amount of the annual survivor allowance under this section is an amount equal to one-half of the amount computed as follows:

1. Multiply an amount equal to 2 per cent of the average salary of the person by the number of years, not exceeding thirty-five, for which the person has credit in the Fund.

2. Where the person has contributed to the *Canada Pension Plan*, reduce the amount computed under paragraph 1 by an amount equal to 0.7 per cent of that part of the average salary of the person that does not exceed the Year's Maximum Pensionable Earnings Average of the person multiplied by the number of years, not exceeding thirty-five, for which the person has credit in the Fund after the year 1965.

R.S.C. 1970, c. C-5

Exception

(3) Subsections (1) and (2) do not apply to the surviving spouse of a deceased person if they became spouses after the date of the deceased person's last day of employment in education. R.S.O. 1980, c. 494, s. 36 (1, 2), *part*.

Survivor allowance to child upon death of surviving spouse

28.—(1) The child or children of a person,

(a) who dies while receiving or with a vested interest in an allowance under this Act; and

(b) who is survived by a spouse who receives an annual survivor allowance in respect of the person,

are entitled upon the death of the spouse to an annual survivor allowance until the child or the youngest of the children attains the age of eighteen years.

Amount of survivor allowance

(2) The amount of the annual survivor allowance under this section is an amount equal to the amount of the annual survivor allowance to which the spouse of the deceased person was entitled after the death of the deceased person. R.S.O.1980, c. 494, s. 36 (1), *part*.

Survivor allowance to child where no surviving spouse

29.—(1) The child or children of a person,

(a) who dies while receiving an allowance under this Act and who is not survived by a spouse; or

(b) who dies with a vested interest in but is not receiving an allowance under this Act and who is not survived by a spouse,

are entitled to an annual survivor allowance until the child or the youngest of the children attains the age of eighteen years.

Amount of survivor allowance

(2) The amount of the annual survivor allowance under this section is an amount equal to the annual survivor allowance to which the spouse of the deceased person would be entitled under this Act if the deceased person were survived by a spouse. R.S.O. 1980, c. 494, s. 36 (1), *part*.

Increase of survivor allowance

30.—(1) A person employed in education may direct the Commission to increase the amount of the survivor allowance related to the allowance to which the person will be entitled when the person ceases to be employed in education to 55 per cent, 60 per cent, 65 per cent, 70 per cent or 75 per cent of the allowance and to reduce the amount of the allowance accordingly.

Time limit

(2) A direction mentioned in subsection (1) must be in writing and must be delivered to the Commission two years or more before the person ceases to be employed in education.

Exception

(3) The Commission shall accept a direction mentioned in subsection (1) that is delivered to the Commission less than two years before the person ceases to be employed in education but before the person applies for an allowance under this Act, if the Commission is satisfied that the person is in good health having regard to the person's age.

Actuarial reduction of allowance

(4) Where a direction mentioned in subsection (1) is delivered in accordance with subsection (2) or accepted in accordance with subsection (3), the amount of the allowance payable

to the person shall be actuarially reduced by the actuary of the Commission in a manner approved by the Commission to allow for the survivor allowance in accordance with the direction, and the amount of the survivor allowance related to the allowance shall be increased in accordance with the direction.

When direction not valid

(5) A direction mentioned in subsection (1) is not valid if the person who gives the direction dies before applying for an allowance under this Act or before ceasing to be employed in education.

Revocation of direction

(6) A person who gives a direction mentioned in subsection (1) may revoke the direction by a written revocation delivered to the Commission before the date of commencement of the person's allowance. *New.*

Survivor allowance to dependant

31.—(1) A person employed in education who does not have a spouse or a child to qualify for a survivor allowance under this Act may direct the Commission to pay a survivor allowance related to the person's allowance to a dependant named in the direction in an amount equal to 50 per cent, 55 per cent, 60 per cent, 65 per cent, 70 per cent or 75 per cent of the amount of the allowance to which the person will be entitled when the person ceases to be employed in education and to reduce the amount of the allowance accordingly.

Time limit

(2) A direction mentioned in subsection (1) must be in writing and must be delivered to the Commission two years or more before the person ceases to be employed in education.

Exception

(3) The Commission shall accept a direction mentioned in subsection (1) that is delivered to the Commission less than two years before the person ceases to be employed in education but before the person applies for an allowance under this Act, if the Commission is satisfied that the person is in good health having regard to the person's age.

Actuarial reduction of allowance

(4) Where a direction mentioned in subsection (1) is delivered in accordance with subsection (2) or accepted in accordance with subsection (3), the amount of the allowance payable to the person shall be actuarially reduced by the actuary of the Commission in a manner approved by the Commission to allow for the survivor allowance in accordance with the direction, and the survivor allowance shall be paid to the dependant in the percentage specified in the direction.

Where person making direction dies before retirement

(5) Where the person making the direction mentioned in subsection (1) dies before applying for an allowance under this Act or before ceasing to be employed in education, the direc-

tion is void and no survivor allowance is payable under subsection (3).

Revocation of direction

(6) A person who gives a direction mentioned in subsection (1) may revoke the direction by a written revocation delivered to the Commission before applying for an allowance under this Act. R.S.O. 1980, c. 494, s. 38.

Survivor allowance where person receiving allowance becomes a spouse

32.—(1) A person who is receiving or has a vested interest in a superannuation allowance under this Act and who becomes a spouse after ceasing to be employed in education may direct the Commission to pay a survivor allowance related to the person's allowance in the amount of 50 per cent, 55 per cent, 60 per cent, 65 per cent, 70 per cent or 75 per cent of the allowance paid or that would otherwise be payable to the person on the first day of the month next following the month in which the person becomes a spouse.

Time limit

(2) A direction mentioned in subsection (1) must be in writing and must be delivered to the Commission,

(a) within ninety days from the date on which the person becomes a spouse; or

(b) where immediately before the person becomes a spouse there is a child who would be entitled upon the death of the person to receive a survivor allowance under this Act, within ninety days from the date the child ceases to be eligible to receive the survivor allowance.

Exception

(3) The Commission may accept a direction mentioned in subsection (1) that is delivered to the Commission after the end of the period of time mentioned in subsection (2), if the Commission is satisfied that the person making the direction is in good health having regard to the person's age.

Actuarial reduction of allowance

(4) Subject to subsection (5), where a direction mentioned in subsection (1) is delivered in accordance with subsection (2) or is accepted in accordance with subsection (3), the amount of the allowance payable to the person shall be actuarially reduced by the actuary of the Commission in a manner approved by the Commission to allow for the survivor allowance in accordance with the direction, and the survivor allowance shall be paid to the surviving spouse in the percentage specified in the direction.

Interest of child

(5) A survivor allowance under this section does not become payable until there is no person eligible to receive a survivor allowance as a child of the person in receipt of or with a vested

interest in the superannuation allowance to which the survivor allowance relates. *New*.

Interpretation R.S.O. 1980, c. 488

33.—(1) In this section, "court" has the same meaning as in Part V of the *Succession Law Reform Act*.

Where more than one surviving spouse

(2) Where more than one person applies to the Commission for a survivor allowance under this Act as spouse of a deceased person who was receiving or had a vested interest in a superannuation allowance, the court, on application by the Commission, by order may direct payment of the survivor allowance or part thereof to one or more of the applicants for the survivor allowance and may specify the proportion of the survivor allowance that shall be paid to each of them.

Application to court

(3) An application to the court may be made in the same manner as an application under Part V of the *Succession Law Reform Act*.

Consideration on application

(4) Upon the application, the court shall determine the eligibility of the persons for the survivor allowance, and section 62 of the *Succession Law Reform Act* applies with necessary modifications in respect of the allocation of proportions of the survivor allowance and, for the purpose, "dependant" means spouse of the deceased person. *New*.

Commencement of survivor allowance

34.—(1) A survivor allowance that is payable under this Act on the death of a person employed in education shall commence as of the day next following the day the person dies.

Idem

(2) A survivor allowance that is payable under this Act on the death of a person in receipt of an allowance under this Act shall commence as of the first day of the month next following the month in which the person dies. R.S.O. 1980, c. 494, s. 43 (2,3).

ALLOWANCES—GENERAL

Rules for computations re part-time employment in education

35.—(1) For the purpose of computing the entitlements under this Act and the regulations of or related to a person who is employed in education on less than a full-time basis, the following rules apply:

1. The person is entitled to credit for service in the proportion that the person's work period bears to the full-time work period for the occupational group in which the person is employed in education.

2. For the purpose of determining length of service in order to qualify for an entitlement (but not for the purpose of computing the amount of an allowance) service for a part of a year shall be deemed to be service for the whole year.

3. The person's annual salary shall be calculated according to the following:

$$\frac{S}{T} \times F = A$$

where,

S = The person's salary for the year.

T = The person's work period.

F = Full-time work period for the occupational group, as determined by the Commission.

A = Annual salary.

4. The person's average salary shall be calculated using the person's annual salary calculated in accordance with Rule 3 of these rules.

Minimum allowances

(2) No increase in the amount of an allowance to a prescribed minimum amount applies to an allowance of or related to a person who is employed in education on less than a full-time basis and has less than ten years of credit in the Fund.

Exception

(3) Subsection (2) does not apply if allowances of or related to persons mentioned in that subsection have been included in the prescribed minimum amounts before the coming into force of this Act. *New*.

Reciprocal arrangements

36.—(1) A person employed in education is entitled to credit for the period of time that the person was engaged in teaching in another part of Canada or the Commonwealth and in respect of which funds are not transferred or paid to the Fund.

Application of subs. (1)

(2) Subsection (1) applies in respect of those parts of Canada or the Commonwealth prescribed by the regulations.

Purpose of credit

(3) A credit under subsection (1) is for the purpose of determining length of service in order to qualify for an allowance but not for the purpose of computing the amount of the allowance. R.S.O. 1980, c. 494, s. 61.

Payment of allowances

37.—(1) An allowance under this Act is payable in monthly instalments. R.S.O. 1980, c. 494, s. 42.

Idem

(2) An allowance under section 14 may be paid, in the discretion of the Commission, in a lump sum, annually, or in semi-annual, quarterly or monthly instalments. R.S.O. 1980, c. 494, s. 32 (5, 7).

Application for allowance

38. An allowance under this Act shall be paid only after the receipt by the Commission of an application in the form that shall be provided by the Commission. R.S.O. 1980, c. 494, s. 40.

Termination of allowance

39. Every allowance under this Act terminates as of the end of the month in which the event that terminates the allowance occurs. R.S.O. 1980, c. 494, s. 44.

Report re employment in education

40.—(1) At the request of the Commission, a person in receipt of a superannuation allowance or a disability allowance under this Act shall report to the Commission the number of days that the person was employed in education while in receipt of the allowance.

Where report not given

(2) Where the report is not given to the Commission within a reasonable time after the request, the Commission may direct that no further allowance under this Act be paid to the person until the report is given to the Commission. R.S.O. 1980, c. 494, s. 19 (3).

Multiple allowances

41. No person is entitled to payment of two superannuation allowances or both a superannuation allowance and a disability allowance under this Act during the same month or other payment period. *New*.

Notice of re-employment by person receiving allowance

42.—(1) A person who is receiving a superannuation allowance under this Act and who becomes employed in education shall give notice in writing of the employment forthwith to the Commission.

Notice of re-employment by person receiving disability allowance

(2) A person who is receiving a disability allowance under section 17 and who becomes employed shall give notice in writing of the employment forthwith to the Commission.

Idem

(3) A person who is receiving a disability allowance under section 18 and who becomes employed in education or employed as a teacher in a school or institution shall give notice in writing of the employment forthwith to the Commission.

Failure to give notice

(4) A person mentioned in subsection (1), (2) or (3) who fails to give the notice required by the subsection is not entitled to a benefit under this Act unless the Commission otherwise directs. R.S.O. 1980, c. 494, s. 45.

Seizure of allowance

43.—(1) The interest of a person in the Fund and in an allowance under this Act is not subject to garnishment, attachment, seizure or other process of law and is not assignable. R.S.O. 1980, c. 494, s. 51.

Application of subs. (1)

(2) Notwithstanding subsection (1), payment of an allowance is subject to execution, seizure or attachment in satisfaction of an order for support or maintenance enforceable in Ontario.

Notice of enforcement

(3) Subsection (2) applies only where the person receiving payment is given ten days notice, or such greater notice as is otherwise required by law in Ontario, as to the enforcement of the order. *New*.

REFUNDS

Refund before 45 years of age

44.—(1) A person who ceases to be employed in education before attaining forty-five years of age is entitled to a refund of an amount equal to the whole of the person's contributions to the Fund with interest on each amount contributed for the period of time it was in the Fund at the rate of 3 per cent per year compounded half-yearly.

Less than ten years service

(2) A person who has credit in the Fund for less than ten years of service and ceases to be employed in education is entitled to a refund of an amount equal to the whole of the person's contributions to the Fund with interest on each amount contributed for the period of time it was in the Fund at the rate of 3 per cent per year compounded half-yearly.

Application of subs. (2)

(3) Subsection (2) does not apply if the person is entitled to an annual superannuation allowance under this Act.

Idem

(4) A person who has credit in the Fund for ten or more years of service and who has ceased to be employed in education after attaining forty-five years of age is entitled to a refund of an amount equal to the whole of the person's contributions to the Fund in respect of service before the 1st day of January, 1965, with interest on each amount contributed for the period of time it was in the Fund at the rate of 3 per cent per year compounded half-yearly.

Less than ten years service at age 65

(5) A person who has credit in the Fund for less than ten years of service and who ceases to be employed in education in

the calendar year in which the person attains or would attain sixty-five years of age or in a later calendar year, is entitled to a refund of an amount equal to twice the amount of the person's contributions to the Fund with interest thereon calculated in accordance with subsection (6).

Interest computation

(6) Interest under subsection (5) shall be computed and credited to the person as at the 31st day of December in each year at the Fund rate for the year on the contribution credited to the person for the year and on the accumulated balance of contributions at the end of the preceding year.

Effect of taking refund

(7) A refund under subsection (1), (2), (4) or (5) is in lieu of an allowance under this Act and taking the refund terminates entitlement to a superannuation allowance, a disability allowance and a survivor allowance, or any of them, in respect of the contributions to which the refund is related.

Time of payment of refund

(8) No refund under subsection (1), (2), (4) or (5) shall be made until three months after the day upon which the person ceased to be employed in education. R.S.O. 1980, c. 494, s. 53.

Manner of payment of refund

(9) A refund shall be paid in a lump sum or, at the written request of the person entitled to the refund, in three equal annual instalments without additional interest. R.S.O. 1980, c. 494, s. 52 (2).

Repayment of refund on re-employment in education

45.—(1) A person who has taken a refund of contributions from the Fund and who subsequently is employed in education for twenty or more days in a school year and desires to be reinstated in the Fund in respect of the former period of employment in education is entitled to be so reinstated upon paying to the Fund an amount equal to the total of the refund previously taken and the interest thereon, if any, paid at the time of the refund together with interest on the total at the debenture rate for the fiscal year at the date of payment of the refund for the period from the date of payment of the refund to and including the date of repayment to the Fund or, where the repayment to the Fund is made in instalments, to and including the date of payment of the first instalment to the Fund and on the balance at the debenture rate for the fiscal year at the date of payment of the first instalment from such date to and including the date of payment of the balance.

Debenture rate

(2) Where the debenture rate mentioned in subsection (1) is less than the rate specified in section 68, the debenture rate shall be deemed to be the rate specified in section 68.

Where part of refund not repaid

(3) A superannuation allowance or disability allowance to which a person mentioned in subsection (1) may become entitled under this Act during the period of repayment shall be reduced actuarially during the person's lifetime by the amount of the refund and interest that is not repaid.

Eligibility for disability allowance

(4) A person who has taken a refund of contributions from the Fund, is subsequently employed in education and elects to be reinstated in the Fund under subsection (1) is not eligible for a disability allowance under this Act until the person has been employed in education for two years after the person's return to employment.

Completion of repayment by survivor

(5) Where a person making payment into the Fund under subsection (1) dies before completing the payment, a person entitled to a survivor allowance related to the allowance to which the deceased person would have been entitled may complete the payment and the survivor allowance shall be calculated and paid in accordance with the full credit of the deceased person in the Fund.

Where payment not completed

(6) A survivor allowance mentioned in subsection (5) shall be reduced actuarially from the full credit obtainable in the Fund under that subsection by the amount of any payment not completed in accordance with that subsection. R.S.O. 1980, c. 494, s. 54.

Return of superannuate to employment

46.—(1) No refund shall be made in respect of contributions to the Fund by a person in receipt of a superannuation allowance under this Act who again becomes employed in education.

Exception

(2) Subsection (1) does not apply to prevent payment to the personal representative of a person mentioned in subsection (1) where no survivor allowance is payable under this Act on the death of the person. R.S.O. 1980, c. 494, s. 55.

Refund to personal representative

47.—(1) The personal representative of a person who was employed in education and has died is entitled to a refund out of the Fund in the circumstances described in subsection (2) and in an amount calculated in accordance with subsection (3).

When refund payable

(2) The circumstances referred to in subsection (1) are,

(a) that no survivor allowance is payable under this Act on the death of the person; or

(b) that all survivor allowances payable under this Act on the death of the person have been fully paid.

(3) The amount of the refund to the personal representative is an amount equal to, Amount of refund

(a) the amounts contributed to the Fund by the person; and

(b) interest on the amounts contributed to the Fund by the person to the end of the month in which the person died or the last survivor allowance was payable, whichever is later, calculated in accordance with subsection (4),

reduced by an amount equal to,

(c) the amount of the allowance, if any, paid under this Act to the person;

(d) the amount of the survivor allowances, if any, paid under this Act consequent upon the death of the person; and

(e) interest on the amounts of the allowance and survivor allowances to the end of the month in which the person died or the last survivor allowance was payable, whichever is later, calculated in accordance with subsection (5).

(4) Interest under subsection (3) shall be computed and credited to the person as at the 31st day of December in each year at the Fund rate for the year of contributions credited to the person for the year and on the accumulated balance of contributions at the end of the preceding year. Interest calculation

(5) Interest under subsection (3) on the amounts of the allowances paid to the person or consequent upon the death of the person shall be calculated as at the 31st day of December in each year at the Fund rate for the year on the accumulated balance of payments for the year and on the accumulated balance of payments at the end of the preceding year. R.S.O. 1980, c. 494, ss. 56, 57, 59. Idem

TRANSFERS

48. A person who has taken a refund of contributions from the Fund and who becomes, in respect of a period of twenty or more days in a school year, a contributor to a pension plan in respect of which there is a reciprocal agreement in force under this Act that permits service under this Act to be taken into account for the purposes of the calculation of a benefit upon the transfer of funds from the Fund may be rein- Reinstatement for purpose of transfer of credits

stated in the Fund without being employed in education upon payment into the Fund of the amount required under section 45, but the reinstatement shall be for the purpose only of a transfer of credits under the reciprocal agreement. *New*.

Transfer agreements

49. Subject to the approval of the Lieutenant Governor in Council, the Commission may enter into agreements with the authorized representatives of any other pension fund respecting the terms and conditions upon which persons may transfer to or from the Fund from or to the other pension fund. R.S.O. 1980, c. 494, s. 62.

SUPERANNUATION ADJUSTMENT BENEFITS

Superannuation Adjustment Fund
R.S.O. 1980, c. 490

50.—(1) The employer of a person employed in education shall deduct the person's contributions under the *Superannuation Adjustment Benefits Act* from the person's salary and shall deliver to the Commission or deposit in the Commission bank account the employee's contributions under that Act at the same times as the employer is required to deliver or deposit amounts deducted as contributions to the Fund.

Interest

(2) Interest is payable by the employer to the Commission on each contribution due under subsection (1) from the date the contribution is due to the date the contribution is delivered or deposited in accordance with subsection (1).

Interest rate

(3) The rate at which the interest is payable is the same as the rate payable on contributions to the Fund that are delivered or deposited after the date on which the contributions are due. R.S.O. 1980, c. 494, s. 25 (7).

Contributions by Ontario to Superannuation Adjustment Fund

51.—(1) For the purpose of contributing the amount required by clause 8 (1) (b) of the *Superannuation Adjustment Benefits Act*, within the month following the month in which employees' contributions are delivered to the Commission or deposited in the Commission bank account there shall be transferred to the account maintained in relation to this Act under the Superannuation Adjustment Fund Account out of the Consolidated Revenue Fund an amount equal to the employees' contributions to the Superannuation Adjustment Fund received in the month by the Commission.

Exceptions

(2) Subsection (1) does not apply in respect of contributions by persons employed in education within the meaning of subclause 1 (1) (j) (v), (vi) or (ix). *New*.

Payment of superannuation adjustment benefits

52.—(1) The Commission shall pay to the persons entitled thereto the superannuation adjustment benefits payable under the *Superannuation Adjustment Benefits Act* related to this Act.

Source of moneys

(2) The Commission shall make the payments under subsection (1) out of the moneys paid to the Commission under section 50.

Additional moneys

(3) Where the moneys mentioned in subsection (2) are insufficient to enable the Commission to make the payments under subsection (1), the Commission shall certify to the Treasurer the amount required to make the payments and the Treasurer shall transfer the amount to the Commission out of the credit balance in the account maintained in relation to this Act under the Superannuation Adjustment Fund Account.

Surplus funds

(4) Not later than the end of each month, the Commission shall transfer to the Treasurer for the account maintained in relation to this Act under the Superannuation Adjustment Fund Account any funds received by the Commission during the preceding month as contributions under the *Superannuation Adjustment Benefits Act*, or as interest on such contributions, that are surplus to the requirements of the Commission in relation to the payment of benefits under that Act.

R.S.O. 1980, c. 490

Purpose of subss. (1-4)

(5) The purpose of subsections (1) to (4) is to provide for the administration of the *Superannuation Adjustment Benefits Act* in relation to persons employed in education and persons entitled to allowances under this Act. *New*.

Determination as to employment

53. For the purposes of section 6 of the *Superannuation Adjustment Benefits Act*, a person's employment in education in a school year, for less than the number of days prescribed by the regulations, after the person ceases to be employed in education and before the person commences to receive a superannuation allowance under this Act shall not be taken into account in determining the year in which the person ceases to be employed in education. *New*.

Accounts as to superannuation adjustments

54.—(1) The Commission shall maintain accounts in which shall be entered all receipts and disbursements by the Commission in respect of the *Superannuation Adjustment Benefits Act*.

Audit of accounts

(2) The accounts mentioned in subsection (1) shall be audited by the Provincial Auditor or by such other auditor as the Lieutenant Governor in Council appoints.

Report

(3) The auditor shall make an annual report, and shall prepare and furnish to the Treasurer such statements and reports as are required by the Treasurer. *New*.

TEACHERS' SUPERANNUATION COMMISSION

Commission

55.—(1) The Teachers' Superannuation Commission is continued.

Composition

(2) The Commission shall be composed of,

(a) five persons who shall be appointed by the Minister; and

(b) five persons employed in education each elected by the members of one of the teacher organizations prescribed by the regulations who are contributors to the Fund.

Election of members

(3) The elections mentioned in clause (2) (b) shall be conducted by secret ballot and in accordance with such procedures as are determined by The Ontario Teachers' Federation.

Chairman, transitional

(4) The person holding the office of chairman of the Commission on the day this Act comes into force shall continue to hold office until the end of the year in which this Act comes into force and until his successor is elected.

Election of chairman by elected members

(5) In the year next following the year in which this Act comes into force and in every second year thereafter, the members of the Commission mentioned in clause (2) (b) shall elect from among them a person who shall be the chairman of the Commission for the year and until the person's successor as chairman is elected.

Election of chairman by appointed members

(6) In the second year following the year in which this Act comes into force and in every second year thereafter, the members of the Commission mentioned in clause (2) (a) shall elect from among them a person who shall be the chairman of the Commission for the year and until the person's successor as chairman is elected.

Vacancy in office of chairman

(7) If in any year a vacancy occurs in the office of chairman of the Commission, the members of the Commission whose duty it was to elect a chairman for the year shall elect from among them a person who shall be the chairman of the Commission for the remainder of the year and until the person's successor as chairman is elected.

(8) If in any year the members of the Commission fail to elect the chairman, the Minister shall appoint the chairman from among the members eligible for election as chairman in the year. Where members fail to elect chairman

(9) When a vacancy occurs among the members, another member shall be appointed by the Minister or by the governing body of the teachers' organization concerned, as the case may be, as soon as is practicable after the vacancy occurs, and the person so appointed shall hold office for the unexpired portion of the term of the member replaced. Vacancy among members

(10) Each member is eligible for reappointment or re-election, as the case may be. Reappointment or re-election

(11) Each member shall hold office for three years and until a successor is appointed or elected. Term of office

(12) The Commission shall meet in the offices of the Commission at such times as the Commission may determine. Meetings

(13) Seven members constitute a quorum. R.S.O. 1980, c. 494, s. 2. Quorum

(14) Each member of the Commission, including the chairman, is entitled to vote on a matter before the Commission, and where the number of votes in favour of a motion before the Commission and the number of votes against the motion are equal, the motion is defeated. Voting

(15) No action or other proceeding for damages shall be commenced or continued against an employee of the Commission for an act or omission in good faith in the course of employment or against a member of the Commission for an act done in good faith in the execution or intended execution of a power or duty under this Act or the regulations or for an alleged neglect or default in the execution of such a power or duty. *New*. Liability

56.—(1) Subject to the approval of the Lieutenant Governor in Council, the Commission may, Property

(a) in its own name acquire by purchase, lease, or otherwise and hold any real property or any interest therein necessary for its actual use and occupation; and

(b) when no longer so necessary, sell or otherwise dispose of any of such property and pay the proceeds thereof into the Fund.

Expenditures re property

(2) Any expenditure incurred by the Commission in connection with any property acquired under subsection (1) shall be deemed to be an administration expense.

Rights re property

(3) The Commission may in its own name contract and be contracted with and sue and be sued.

Crown agency for purposes of R.S.O.1980, c. 106
1983, c. 6

(4) The Commission shall be deemed to be a Crown agency to which the *Crown Agency Act* applies for the purposes of the *Construction Lien Act, 1983*. R.S.O. 1980, c. 494, s. 3.

Documents

57. Where any document is required to be executed by the Commission, it is sufficient if the document is signed in the name of the Commission by any two of,

(a) the chairman of the Commission;

(b) a member of the Commission designated by the Commission for the purpose;

(c) the director of the Commission. R.S.O. 1980, c. 494, s. 4.

Explanations to contributors R.S.O. 1980, c. 373

58. The Commission shall continue to provide to each contributor to the Fund the explanations required to be provided to contributors to the Fund by the *Pension Benefits Act*. R.S.O. 1980, c. 494, s. 5.

Duty of Commission

59. It is the duty of the Commission to manage the affairs of the Commission, to administer this Act and to advise the Minister on matters related to the affairs of the Commission or the administration of this Act. R.S.O. 1980, c. 494, s. 6.

Staff

60.—(1) Subject to the approval of the Lieutenant Governor in Council, the Commission may,

(a) establish job classifications, salary ranges, and the terms and conditions of employment for its employees; and

(b) appoint a director, an actuary, a solicitor, a medical referee, and such other employees as are considered proper.

Salaries

(2) The employees of the Commission shall be paid out of the Fund.

(3) The *Public Service Superannuation Act* applies to the employees of the Commission as though the Commission had been designated by the Lieutenant Governor in Council under section 28 of that Act. R.S.O. 1980, c. 494, s. 7. Application of R.S.O.1980, c. 419

61. The Commission shall not appoint a person as the actuary of the Commission unless the person is a Fellow of the Canadian Institute of Actuaries. R.S.O. 1980, c. 494, s. 1 (1) (a). Actuary

62. The period from and including the 1st day of January to and including the 31st day of December constitutes the fiscal year of the Commission. R.S.O. 1980, c. 494, s. 14. Fiscal year of Commission

63.—(1) The Commission shall annually, after the end of its fiscal year, file with the Minister a report upon the affairs and finances of the Commission. Annual report

(2) The Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. R.S.O. 1980, c. 494, s. 17. Idem

TEACHERS' SUPERANNUATION FUND

64.—(1) The Teachers' Superannuation Fund is continued. Fund

(2) The Treasurer is the custodian of the Fund. Custodian

(3) The actuary of the Commission shall make an actuarial valuation of the Fund as of the end of each third year in accordance with the *Pension Benefits Act* and the regulations under that Act and, when directed to do so by the Minister, at any other time. R.S.O. 1980, c. 494, s. 8. Actuarial valuations R.S.O. 1980, c. 373

65. The Commission may receive any gift, devise, or bequest made to or for the purposes of the Fund and shall pay it or the proceeds thereof into the Fund to be applied as directed by the donor, and, if so directed, in additional benefits to those provided by this Act or, in the absence of such a direction, to the general purposes of the Fund. R.S.O. 1980, c. 494, s. 9. Gifts to Fund

66.—(1) All securities belonging to the Fund shall be deposited with the Treasurer. Securities

(2) The Treasurer is responsible for the safekeeping of all securities deposited under subsection (1). R.S.O. 1980, c. 494, s. 11. Safekeeping of securities

Accounts

67. Accounts shall be kept in which shall be entered all assets and liabilities and payments into and disbursements out of the Fund. R.S.O. 1980, c. 494, s. 13.

Interest

68. Except where otherwise specifically provided by this Act,

(a) interest payable under this Act or the regulations shall be at the rate of 6 per cent per year, compounded half-yearly; and

(b) interest is payable on any payment into or out of the Fund, other than an allowance, that is thirty days or more in arrears. R.S.O. 1980, c. 494, s. 15.

Audit

69.—(1) The accounts of the Fund shall be audited and the securities in which the moneys of the Fund may be invested shall be examined and checked in each fiscal year of the Commission by the Provincial Auditor or by such other auditor as the Lieutenant Governor in Council appoints, and the auditor shall make an annual report, and shall prepare and furnish to the Treasurer such statements and reports as are required by the Treasurer.

Cost of audit

(2) The cost of the audits and reports shall be paid by the Commission out of the Fund. R.S.O. 1980, c. 494, s. 16.

Payments into Fund

70. An account shall be kept in a chartered bank of Canada in the name of the Treasurer as custodian of the Fund, and every amount received as a payment into the Fund shall be deposited to the credit of such account. R.S.O. 1980, c. 494, s. 18.

Payments out of Fund

71.—(1) Every allowance, every refund, and the expenses of the administration of this Act, are payable out of the Fund.

Method of payment

(2) Every payment out of the Fund shall be made,

(a) by cheque of the Commission signed by; or

(b) by a direct transfer into the payee's account in a chartered bank or other institution entitled to receive money on deposit, pursuant to an arrangement authorized by the signatures of,

any two of, the chairman of the Commission, a member of the Commission designated by the Commission for the purpose, or the director of the Commission, and any such signature may be affixed in facsimile by use of a rubber stamp or by printing,

lithographing, engraving or other means. R.S.O. 1980, c. 494, s. 19 (1,2).

Province of Ontario debentures

72.—(1) The Treasurer shall issue from time to time a Province of Ontario debenture for the amount of funds accumulated to the credit of the Fund and not required for current expenditures.

Treasurer to determine rate and term

(2) The Treasurer, in consultation with the Commission and subject to the approval of the Lieutenant Governor in Council, shall determine in accordance with subsections (3) and (4) the rate and term of a debenture issued under subsection (1).

Rate

(3) A debenture issued under subsection (1) shall bear interest payable half-yearly at a rate based on the Canadian secondary market when the debenture is issued for Ontario securities, securities guaranteed by Ontario and other similar securities, or any of them, with a term corresponding to the term of the debenture.

Term

(4) The term of a debenture issued under subsection (1) shall be not less than twenty years and not more than twenty-five years.

Charge on Consolidated Revenue Fund

(5) A debenture issued under subsection (1) is a charge upon the Consolidated Revenue Fund. R.S.O. 1980, c. 494, s. 10.

Bank loans

73.—(1) The Treasurer, as custodian of the Fund, may, at the request of the Minister, arrange for a chartered bank of Canada to advance to the Fund, by way of overdraft or otherwise, any amount required temporarily to provide for payments out of the Fund and may furnish securities of the Commission as security therefor, and every such advance shall be repaid within one year out of interest or contributions to the Fund, or both.

Short-term investments

(2) The Treasurer, as custodian of the Fund, may at the request of the Minister, when both the Treasurer and the Minister consider it advisable for the sound and efficient management of the Fund, invest and authorize the Commission to invest any part of the Fund for any period not exceeding twelve months in any securities in which the Treasurer may invest the public moneys of Ontario. R.S.O. 1980, c. 494, s. 20.

Payment of share of unfunded liability

74.—(1) Every designated organization or designated private school shall deliver to the Commission or deposit in the Commission bank account on or before the 31st day of December in each year an amount equal to the part of the increase in the unfunded liability of the Fund over the

unfunded liability base that is attributable to the designated private school or designated organization.

Interest

(2) Interest is payable by every designated organization or designated private school to the Commission on the amount payable under subsection (1) from the date the amount is due to the date the amount is delivered to the Commission or deposited in the Commission bank account.

Rate of interest

(3) The rate at which the interest is payable is the Bank of Canada rate in effect on the date the amount is due under subsection (1) plus 4 per cent. *New*.

GENERAL

Regulations

75.—(1) The Lieutenant Governor in Council may make regulations,

(a) prescribing any matter required or authorized by this Act to be, or referred to in this Act as, prescribed by the regulations;

(b) prescribing forms and providing for their use;

(c) prescribing the powers and duties of the officers of the Commission, or any of them;

(d) prescribing the form and manner in which and by whom the accounts and records of the Commission shall be kept;

(e) authorizing the Commission to require persons who are contributors to the Fund or persons who are receiving allowances under this Act, and boards, to furnish information to or for the use of the Commission and prescribing the form thereof;

R.S.O. 1980, c. 490

(f) respecting the administration of moneys held by the Commission for the Superannuation Adjustment Fund under the *Superannuation Adjustment Benefits Act*, including provision for administration fees to the Commission, audits, payments, transfers and temporary draws on the Fund;

(g) authorizing the Commission to enter into agreements with boards, designated organizations and designated private schools respecting the administration of supplementary benefit plans provided by the boards, designated organizations and designated private schools for their employees;

(h) prescribing the method of calculating the part of the increase in the unfunded liability of the Fund over the unfunded liability base that is attributable to each designated organization or designated private school;

(i) providing for and regulating the granting of credit in the Fund upon payment of contributions to the Fund by or on behalf of persons employed in education in respect of absence from duty,

(i) because of ill health,

(ii) because of pregnancy or the adoption of a child,

(iii) because of duties as jurors,

(iv) because of duties as members of the Legislative Assembly of Ontario, of the House of Commons of Canada, of the council of a municipality or of a local board as defined in the *Municipal Affairs Act*, R.S.O. 1980, c. 303

(v) in order to take a course of study approved by the Commission,

(vi) for a period of leave authorized by the employing board,

(vii) in order to travel for a purpose approved by the Commission, or

(viii) because of participation in a position-sharing scheme approved by the employer;

(j) providing for and regulating the granting of credit in the Fund upon payment of contributions to the Fund in respect of hiatuses in employment in education,

(i) because of ill health,

(ii) because of pregnancy or the adoption of a child,

(iii) because of duties as members of the Legislative Assembly of Ontario, of the House of Commons of Canada, of the council of a municipality or of a local board as defined in the *Municipal Affairs Act*,

(iv) in order to take a course of study approved by the Commission, or

(v) in order to travel for a purpose approved by the Commission;

(k) providing for and regulating the granting of credit in the Fund to a person employed in education or who was employed in education for prior or subsequent teaching or supervisory services performed in a part of Canada or the Commonwealth other than Ontario or in a school maintained by the Government of Canada for children of members of the Canadian Forces, for Indians or for inmates of penal institutions, prescribing the period of time or the method of determining the period of time for which the credit may be given, prescribing the amount or the method of determining the amount of the credit, limiting the purpose for which the credit may be used and prescribing the method of calculating the payment that must be made and the terms of payment to the Fund in order to obtain the credit;

(l) providing for and regulating the granting of credit in the Fund to a person employed in education in respect of prior employment in business or industry related to the employment in education, prescribing the period of time or the method of determining the period of time for which the credit may be given, prescribing the amount or the method of determining the amount of the credit, prescribing the method of calculating the payment that must be made and the terms of payment to the Fund in order to obtain the credit and defining "prior employment in business or industry" for the purpose;

(m) respecting the transfer of moneys to or from the Fund from or to another pension fund under an agreement approved by the Lieutenant Governor in Council under this Act, including the credits or the methods of calculating credits in the Fund and the additional contributions that may be made to the Fund in relation to such transfers;

(n) providing for and regulating the granting of credit in the Fund for periods of teaching or supervisory service performed, with the approval of the Minister of Education, in a jurisdiction other than Ontario, and prescribing conditions in respect of the giving of such credit, prescribing the amount or the method of cal-

culating the amount of the credit and prescribing the method of calculating the payment that must be made and the terms of payment to the Fund in order to obtain the credit;

(o) prescribing the method of calculating the periods of time for which credits will be given in the Fund to teachers in designated private schools for past teaching service and prescribing the method of calculating the payment that must be made and the terms of payment to the Fund in order to obtain the credit;

(p) prescribing the conditions under which persons in receipt of allowances under this Act may become employed in education and continue to receive allowances under this Act and providing for reductions in the allowances;

(q) defining "active service", providing for credit in the Fund in respect of active service, and prescribing the terms and conditions upon which the credit may be given, the method of calculating the period for which the credit may be given, the method of calculating the amount of the credit and prescribing the method of calculating the payment that must be made and the terms of payment to the Fund in order to obtain the credit;

(r) respecting persons employed in schools whose board or teachers, or both, are reported by the Minister to the Commission as having failed to comply with this Act or the regulations or with an Act or regulation administered by the Ministry of Education including,

(i) the terms and conditions upon which contributions shall be made to the Fund, and

(ii) the credit to be given to such persons in respect of the period of non-compliance;

(s) prescribing the conditions under which a refund may be made to a person who establishes credit in the Fund under the regulations or who pays money into the Fund under the regulations for the purpose of establishing credit, and prescribing the method of determining the amount of the refund. R.S.O.1980, c. 494, s. 63.

Transitional

(2) A regulation made under clause (1) (i) or (l) may authorize the granting of credit in the Fund in respect of absence from

duty because of participation in a position-sharing scheme approved by the employer or in respect of prior employment in business or industry related to employment in education by persons who ceased to be employed in education on or after the 31st day of May, 1982 and before the 1st day of September, 1984. *New.*

Where employment ceased before May 31st, 1982

76.—(1) Except as provided in subsection (2), the *Teachers' Superannuation Act*, being chapter 494 of the Revised Statutes of Ontario, 1980, continues to apply in respect of allowances related to persons who ceased to be employed within the meaning of that Act before the 1st day of September, 1984.

Transitional

(2) Instalments payable on or after the 1st day of September, 1984 for allowances payable to persons who ceased to be employed in education on or after the 31st day of May, 1982 and before the 1st day of September, 1984 shall be computed and paid in amounts equal to the amounts that would have been paid if this Act had come into force on the 31st day of May, 1982. *New.*

Recommencement of allowance to widow or widower

77.—(1) A person whose allowance under section 36 of the *Teachers' Superannuation Act*, being chapter 494 of the Revised Statutes of Ontario, 1980, as the widow or widower of an individual who died with credit in the Fund for ten or more years of service or while in receipt of an allowance under that Act, was terminated by the person's remarriage before the coming into force of this Act, is entitled, upon making an application signed by the person, to have the allowance recommence as of the first day of the month next following the month in which this Act comes into force.

Computation

(2) An allowance mentioned in subsection (1) shall be recommenced in an amount equal to the amount that would have been paid to the person on the first day of the month next following the month in which this Act comes into force if the allowance had not been terminated by the person's remarriage.

Continuation of allowance to child or children

(3) Where an allowance became payable under section 36 of the said Act to the child or children of an individual mentioned in subsection (1) upon the remarriage of the widow or widower of the individual before the coming into force of this Act, the child or children continue to be entitled to the allowance in the same manner as if this Act had not come into force and notwithstanding the recommencement of the allowance to the widow or widower of the individual. *New.*

Repeal

78.—(1) Section 10 of the *Teachers' Superannuation Act*, being chapter 494 of the Revised Statutes of Ontario, 1980, is repealed on the 1st day of April, 1984.

Idem

(2) The said *Teachers' Superannuation Act*, other than section 10, is repealed on the 1st day of September, 1984.

Commencement

79.—(1) This Act, except sections 1 to 52 and 54 to 76, comes into force on the day it receives Royal Assent.

Idem

(2) Section 72 comes into force on the 1st day of April, 1984.

Idem

(3) Sections 1 to 52, 54 to 71 and 73 to 76 come into force on the 1st day of September, 1984.

Short title

80. The short title of this Act is the *Teachers' Superannuation Act, 1983*.

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

Bill 149



An Act to amend the Provincial Courts Act

The Hon. R. McMurtry
Attorney General

1st Reading	December 9th, 1983
2nd Reading	
3rd Reading	
Royal Assent	

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTE

The Bill designates the provincial courts (family division) as youth courts, as contemplated by the *Young Offenders Act* (Canada). The designation will be reviewed before April 1, 1985, the date when young persons between the ages of sixteen and eighteen will be brought under the *Young Offenders Act* in Ontario.

Bill 149 1983

An Act to amend the Provincial Courts Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

s. 23 (2) (a), re-enacted

1. **Clause 23 (2) (a) of the *Provincial Courts Act*, being chapter 398 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:**

(a) is a youth court for the purposes of the *Young Offenders Act* (Canada). 29-30-31. Eliz. II. c. 110

Repeal

2. **Clause 23 (2) (a) of the said Act, as re-enacted by section 1 of this Act, is repealed on the 1st day of April, 1985.**

Commencement

3. **This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.**

Short title

4. **The short title of this Act is the *Provincial Courts Amendment Act, 1983*.**

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

Bill 149

(Chapter 85
Statutes of Ontario, 1983)

An Act to amend the Provincial Courts Act

The Hon. R. McMurtry
Attorney General

1st Reading	December 9th, 1983
2nd Reading	December 15th, 1983
3rd Reading	December 15th, 1983
Royal Assent	December 16th, 1983

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

Bill 149 1983

An Act to amend the Provincial Courts Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. **Clause 23 (2) (a) of the *Provincial Courts Act*, being chapter 398 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:** s. 23 (2) (a), re-enacted

(a) is a youth court for the purposes of the *Young Offenders Act* (Canada). 29-30-31, Eliz. II, c. 110

2. **Clause 23 (2) (a) of the said Act, as re-enacted by section 1 of this Act, is repealed on the 1st day of April, 1985.** Repeal

3. **This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.** Commencement

4. **The short title of this Act is the *Provincial Courts Amendment Act, 1983*.** Short title

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

Bill 150

An Act to amend the Unified Family Court Act

The Hon. R. McMurtry
Attorney General

1st Reading December 9th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTE

The Bill designates the Unified Family Court as a youth court, as contemplated by the *Young Offenders Act* (Canada). The designation will be reviewed before April 1, 1985, the date when young persons between the ages of sixteen and eighteen will be brought under the *Young Offenders Act* in Ontario.

Bill 150 1983

An Act to amend the Unified Family Court Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause 16 (a) of the *Unified Family Court Act*, being chapter 515 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor: s. 16 (a), re-enacted

(a) is a youth court for the purposes of the *Young Offenders Act* (Canada); and 29-30-31. Eliz. II. c. 110

. . . . .

2. Clause 16 (a) of the said Act, as re-enacted by section 1 of this Act, is repealed on the 1st day of April, 1985. Repeal

3. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

4. The short title of this Act is the *Unified Family Court Amendment Act, 1983*. Short title

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

Bill 150

(Chapter 86
Statutes of Ontario, 1983)

An Act to amend the Unified Family Court Act

The Hon. R. McMurtry
Attorney General

1st Reading	December 9th, 1983
2nd Reading	December 15th, 1983
3rd Reading	December 15th, 1983
Royal Assent	December 16th, 1983

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

Bill 150 1983

An Act to amend the Unified Family Court Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. **Clause 16 (a) of the *Unified Family Court Act*, being chapter 515 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:** s. 16 (a), re-enacted

(a) is a youth court for the purposes of the *Young Offenders Act* (Canada); and 29-30-31, Eliz. II, c. 110

. . . . .

2. **Clause 16 (a) of the said Act, as re-enacted by section 1 of this Act, is repealed on the 1st day of April, 1985.** Repeal

3. **This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.** Commencement

4. **The short title of this Act is the *Unified Family Court Amendment Act, 1983*.** Short title



Bill 151

An Act to amend the Provincial Offences Act

The Hon. R. McMurtry
Attorney General

1st Reading December 9th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTE

The amendment clarifies the intent that the *Summary Convictions Act* is to continue to apply in respect of parking infractions until Part II of the *Provincial Offences Act* is proclaimed in force. The amendment would not affect appeals on the question that are already under way or appeals from past decisions in which the question was raised. Otherwise, the amendment is back-dated to the date when the Revised Statutes of Ontario, 1980 came into force.

Bill 151 1983

An Act to amend the Provincial Offences Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) The *Provincial Offences Act*, being chapter 400 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section: s. 149, enacted

149. *The Summary Convictions Act*, being chapter 450 of the Revised Statutes of Ontario, 1970, continues to apply in respect of parking infractions as defined in section 14 until Part II comes into force. Application of R.S.O.1970, c. 450

(2) Subsection (1) does not apply where an appeal is taken from a decision in respect of a parking infraction as defined in section 14 of the *Provincial Offences Act*, Application of subs.(1) R.S.O. 1980, c. 400

(a) if the appeal was filed before the 12th day of December, 1983 and the issue of the interpretation of section 148 of the *Provincial Offences Act* is a stated ground of the appeal; or

(b) if the decision appealed from was made before the 12th day of December, 1983 and the issue of the interpretation of section 148 of the *Provincial Offences Act* was in issue before the court making the decision.

2. Section 1 shall be deemed to have come into force on the 1st day of August, 1981. Commencement

3. The short title of this Act is the *Provincial Offences Amendment Act, 1983*. Short title

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

LIBRARY
APR 23

Bill 151

(Chapter 87
Statutes of Ontario, 1983)

An Act to amend the Provincial Offences Act

The Hon. R. McMurtry
Attorney General

1st Reading	December 9th, 1983
2nd Reading	December 15th, 1983
3rd Reading	December 15th, 1983
Royal Assent	December 16th, 1983

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

Bill 151 1983

An Act to amend the Provincial Offences Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) The *Provincial Offences Act*, being chapter 400 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section: s. 149, enacted

149. *The Summary Convictions Act*, being chapter 450 of the Revised Statutes of Ontario, 1970, continues to apply in respect of parking infractions as defined in section 14 until Part II comes into force. Application of R.S.O.1970, c. 450

(2) Subsection (1) does not apply where an appeal is taken from a decision in respect of a parking infraction as defined in section 14 of the *Provincial Offences Act*, Application of subs.(1) R.S.O. 1980, c. 400

(a) if the appeal was filed before the 12th day of December, 1983 and the issue of the interpretation of section 148 of the *Provincial Offences Act* is a stated ground of the appeal; or

(b) if the decision appealed from was made before the 12th day of December, 1983 and the issue of the interpretation of section 148 of the *Provincial Offences Act* was in issue before the court making the decision.

2. Section 1 shall be deemed to have come into force on the 1st day of August, 1981. Commencement

3. The short title of this Act is the *Provincial Offences Amendment Act, 1983*. Short title

Government Publications

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

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Bill 152

An Act to amend the Proceedings Against the Crown Act

The Hon. R. McMurtry
Attorney General

1st Reading December 9th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTES

SECTION 1. At present, the Crown is not subject to process in the nature of execution against assets in satisfaction of a judgment.

The amendment would permit execution by way of garnishment against money owing as remuneration for goods or services.

SECTION 2. The provision repealed provides a procedure for payment by the Treasurer of Ontario out of the wages of an employee to a creditor, in substitution for the garnishment procedure.

Bill 152 1983

An Act to amend the Proceedings Against the Crown Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 25 of the *Proceedings Against the Crown Act*, being chapter 393 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor: s. 25, re-enacted

25.—(1) Subject to subsection (2), no execution or attachment or process in the nature thereof shall be issued out of any court against the Crown. Prohibition of execution against the Crown

(2) A garnishment that is otherwise lawful may issue against the Crown for the payment of money owing or accruing as remuneration payable by the Crown for goods or services, subject to section 7 of the *Wages Act*. Garnishments against Crown

R.S.O. 1980, c. 526

(3) The Lieutenant Governor in Council may make regulations prescribing the method of service on the Crown in respect of garnishments under subsection (2) in place of the method prescribed in section 14. Regulations as to service

2. Section 26 of the *Public Service Act*, being chapter 418 of the Revised Statutes of Ontario, 1980, is repealed. R.S.O.1980, c. 418, s. 26, repealed

3. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

4. The short title of this Act is the *Proceedings Against the Crown Amendment Act, 1983*. Short title

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APR 23

Bill 152

(Chapter 88
Statutes of Ontario, 1983)

An Act to amend the Proceedings Against the Crown Act

The Hon. R. McMurtry
Attorney General

1st Reading	December 9th, 1983
2nd Reading	December 15th, 1983
3rd Reading	December 15th, 1983
Royal Assent	December 16th, 1983

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

Bill 152 1983

An Act to amend the Proceedings Against the Crown Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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4. The short title of this Act is the *Proceedings Against the Crown Amendment Act, 1983*. Short title

Government Publications

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

Bill 153

APR 23

An Act to revise the Election Act

The Hon. T. L. Wells
Minister of Intergovernmental Affairs

1st Reading December 13th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTES

The Bill revises the existing *Election Act*, enacted largely in its present form by S.O. 1968-69, c. 33, but extensively amended by S.O. 1971, c. 100 and now appearing in R.S.O. 1980 as chapter 133. Among the principal features of the Bill are the following:

1. Certain election terms have been changed to more accurately reflect the nature of the proceedings. Set out below is a Table showing the existing expression on the left and on the right the corresponding expression used in the Bill:

FROM	TO
Polling Subdivision	Polling Division
List of Voters	List of Electors
Voter (up to time of voting)	Elector
Assistant Revising Officer	Revision Assistant
Official Count	Official Tabulation

2. The position of official agent has been deleted in view of the provision in the *Election Finances Reform Act* requiring all candidates to appoint a chief financial officer.

3. Any references to time in the Act refer to the time that is in effect locally. (s. 2).

4. Polls will open at 9 a.m. and close at 8 p.m., except in the electoral districts of Kenora and Rainy River, where they will open at 8 a.m. and close at 7 p.m. Polls throughout Ontario will accordingly open and close simultaneously. (s. 40).

5. Employers are to allow polling officials appointed by the returning officer a leave of absence to perform their duties. (s. 6).

6. The minimum election period is changed to thirty days and the maximum to sixty-seven days. (s. 9).

7. Effective July 1, 1986, British subjects who are not Canadian citizens will not qualify to vote at an election; on the same date, the present requirement of twelve months' residency in Ontario will be reduced to six months' residency. (s. 15).

8. Effective July 1, 1986, British subjects who are not Canadian citizens will not be qualified to be candidates; on the same date, the present requirement of twelve months' residency in Ontario will be reduced to six months' residency. (s. 26).

9. The prohibition against returning officers and election clerks voting is removed.

10. The disqualification from voting of mentally ill persons is clarified. (s. 16).

11. The timing of the enumeration of electors is to be decided by the Chief Election Officer. (s. 18).

12. Voting proxy certificates may be obtained up to and including the day immediately preceding polling day; in addition, the grounds upon which a person is entitled to appoint a voting proxy are enlarged and a person may be a voting proxy for only two electors. (s. 17).

13. The category of persons who may represent an applicant at the revision is broadened. (s. 22 (2)).

14. Provision is made for the issuing of a certificate to vote, up to and including the day immediately preceding polling day to any elector whose name does not appear in the polling list. (ss. 22,24).

15. Provision is made for the returning officer to provide to each candidate a list of persons to whom a certificate to vote has been issued. (s. 21 (9)).

16. At the general poll, polling places shall, so far as is reasonably possible, provide level access for wheelchairs; such wheelchair access is mandatory at the advance polls. (ss. 13,44).

17. Landlords of buildings of 100 dwelling units or more, municipalities and school boards must, on the request of a returning officer, make premises under their control available as polling places. (s. 13).

18. The wording of the nomination procedure is changed to include the following requirements:

    (a) the signatures of twenty-five electors;

    (b) a deposit of $200;

    (c) the undertaking of a candidate to file an application for registration under the *Election Finances Reform Act*. (s. 27).

19. The deadline for providing to the returning officer a list of persons as nominations by candidates for enumerators is extended to seventy-two hours previous to the start of enumeration and the deadline for nominating poll officials is extended to seven days previous to polling day. (ss. 18,39).

20. Provision has been made for additional advance polls in the office of the returning officer on certain specified days between the hours of 11 a.m. and 8 p.m. (s. 44).

21. Advance polls at other locations are to be held on the Thursday, Saturday and Monday immediately preceding polling day; the locations must give access to wheelchairs; no declaration is required of any elector presenting himself at an advance poll. (ss. 44,45).

22. The provision permitting the ballot of an elector who is blind to be marked by a friend is extended to all disabled electors. (s. 55).

23. Provision is continued, in the event of a tie after the official tabulation or after a judicial recount, that the successful candidate will be determined by a casting vote given by the returning officer. (ss. 66,76).

24. The maximum penalties that may be imposed for various election offences are increased; generally from $1,000 to $5,000. (ss. 89,96).

25. Sections 142, 143, 161, 162 and 163 of the existing Act are dropped as redundant in light of the *Election Finances Reform Act*.

26. Sections have been added dealing with the office of the Chief Election Officer setting out the manner of appointment of staff, their job classifications, salaries and other benefits. (ss. 113 to 116).

27. Section 6 of the *Legislative Assembly Act,* dealing with the qualification of members, is amended effective on the dissolution of the Legislature that occurs after July 1, 1986; after that date British subjects who are not Canadian citizens will not be qualified to sit and vote as members of the Assembly. (s. 117).

Bill 153 1983

An Act to revise the Election Act

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

INTERPRETATION

Interpretation

1. In this Act,

(a) "advance poll" means a poll held under section 44;

(b) "ballot" means a ballot used for the conduct of an election;

R.S.O. 1980, c. 235

(c) "Board" means the Board of Internal Economy referred to in section 84 of the *Legislative Assembly Act*;

(d) "candidate at an election" and "candidate" mean a person elected to serve in the Assembly and a person who is nominated as a candidate at an election or is declared by himself or by others to be a candidate on or after the date of the issue of the writ or after the dissolution or vacancy in consequence of which the writ has been issued;

R.S.C. 1970, c. C-34

(e) "corrupt practice" means any act or omission, in connection with an election, in respect of which an offence is provided under the *Criminal Code* (Canada) or which is a corrupt practice under this Act;

(f) "election" means an election of a member or members to serve in the Assembly;

(g) "elector" means a person who is entitled under this Act to vote at an election to the Assembly;

R.S.O. 1980, c. 450

(h) "electoral district" means an electoral district as set out in the *Representation Act*;

(i) "general election" means an election in respect of which election writs are issued for all electoral districts;

(j) "polling division" means a polling division established by the returning officer in accordance with this Act;

(k) "polling list" means the list of electors furnished to a deputy returning officer by the returning officer in accordance with this Act;

(l) "prescribed" means prescribed by the Lieutenant Governor in Council or by the Chief Election Officer;

(m) "registered candidate" means a candidate registered with the Commission on Election Contributions and Expenses under the *Election Finances Reform Act*; R.S.O. 1980, c. 134

(n) "registered party" means a political party registered with the Commission on Election Contributions and Expenses under the *Election Finances Reform Act*;

(o) "residence", and similar expressions used in relation to a person, means his true, fixed, permanent home or lodging place maintained by him and to which, whenever he is absent, he has the intention of returning, subject to the following rules:

1. The place where a person's family resides shall be deemed to be his residence unless he takes up or continues his residence at some other place with the intention of remaining there, in which case he shall be deemed to be a resident of such other place.

2. The place where a single person occupies a room or part of a room as a regular lodger or to which he habitually returns, not having any other permanent lodging place, shall be deemed to be his residence.

3. No person shall be deemed to be ordinarily resident in quarters or premises that are generally occupied during some or all of the months of May to October only and generally remain unoccupied during some or all of the months of November to April unless,

i. he is occupying such quarters in the course of and in the pursuit of his ordinary gainful occupation, or

ii. he has no quarters in any other electoral district to which he might at will remove;

(p) "voter" means an elector who has appeared at a polling place and has accepted a ballot for marking which has been placed in the ballot box or has declined his ballot and so declared.

TIME

References to time

2. Any expression of or reference to time in this Act refers to the time that is in effect locally, that is, either standard time or daylight saving time, as the case may be.

STATUTORY DECLARATIONS

Oaths and statutory declarations, who may take

3.—(1) Except where otherwise provided, an oath or statutory declaration for the purposes of this Act may be taken by a returning officer, election clerk, revision assistant, justice of the peace, a commissioner for taking affidavits or a notary public and for election purposes, deputy returning officers and poll clerks are empowered to take such oaths or declarations at the poll.

No charge for taking oath or declaration

(2) Every person taking an oath or statutory declaration under or for the purposes of this Act shall do so gratuitously.

ADMINISTRATION

Appointment of C.E.O. and A.C.E.O.

4.—(1) The Lieutenant Governor in Council, on the address of the Assembly, shall appoint, as an officer of the Assembly, a Chief Election Officer, who shall be responsible for the administration of this Act and the Lieutenant Governor in Council may appoint, as an officer of the Assembly, an Assistant Chief Election Officer.

Remuneration of C.E.O.

(2) The Chief Election Officer shall be paid such salary as may be determined by the Lieutenant Governor in Council.

Salary of C.E.O. paid out of Consolidated Revenue Fund

(3) The salary of the Chief Election Officer shall be charged to and paid out of the Consolidated Revenue Fund.

Powers and duties of C.E.O.

(4) The Chief Election Officer shall consult with, advise and supervise the returning officers and election clerks in the performance of their duties, and may visit in person and consult with the deputy returning officer and poll clerk at any polling location.

Powers and duties of A.C.E.O.

(5) In the absence or illness of the Chief Election Officer or if the office is vacant, the Assistant Chief Election Officer shall act in his place and, while so acting, possesses the same powers and shall perform the same duties as the Chief Election Officer.

Appointment of Acting C.E.O.

(6) If at any time subsequent to the issue of the writs for an election the office of Assistant Chief Election Officer is vacant and if the Chief Election Officer is absent or through illness is

unable to perform the duties of his office or if the office is vacant, the Lieutenant Governor in Council may appoint some person as Acting Chief Election Officer to hold office during such period of time as is specified in the appointment and the Acting Chief Election Officer shall act in the place of the Chief Election Officer and while so acting possesses the same powers and shall perform the same duties as the Chief Election Officer.

In cases of emergency, etc.

(7) Where in the opinion of the Chief Election Officer, by reason of any mistake, miscalculation, emergency or unusual or unforeseen circumstance, a situation exists for which no provision is made under this Act, he may make such appointments or give such directions as he considers proper and anything done in compliance with any such direction is not open to question, but the Chief Election Officer shall immediately give notice of any such direction to the candidates affected.

Delegation

(8) The Chief Election Officer may delegate in writing to any officer on his staff authority to exercise any power and perform any duty, other than those mentioned in subsection (7), assigned to him by this Act.

Forms

(9) The Chief Election Officer shall prescribe the forms for use under this Act.

Administrative in nature

(10) The prescribing of forms under subsection (9) or the exercise of any power or the performance of any duty by the Chief Election Officer that he is authorized or required to exercise or perform under this Act shall be deemed to be an act or acts of an administrative nature.

Persons excluded from being returning officers, etc.

5.—(1) The following persons shall not be appointed or act as a returning officer, election clerk, deputy returning officer or poll clerk:

1. Judges of federal or provincial courts.
2. Crown Attorneys and Clerks of the Peace.
3. Members of the Executive Council.
4. Members of the Parliament of Canada or of the Assembly.
5. Persons who have served as members of the Assembly in the session next preceding the election.
6. Persons who have at any time been found guilty of a corrupt practice.

Validity of election not affected

(2) A contravention of this section does not affect the validity of the election.

EMPLOYEES SERVING OR VOTING AT AN ELECTION

Leave to be granted to employee to serve

6.—(1) Every employer shall, on request made not later than seven days before the time required, grant leave to an employee who has been appointed by a returning officer to serve as a poll official to enable him to perform his duties and the employer may not dismiss an employee who has been so appointed.

Remuneration

(2) The employer is not required to remunerate his employee for any leave granted under subsection (1), but such leave shall not be subtracted from any vacation entitlement.

Employees to have three consecutive hours for voting

(3) Every employee who is qualified to vote shall, while the polls are open on polling day at an election, have three consecutive hours for the purpose of voting and, if the hours of his employment do not allow for three consecutive hours, he may request that his employer allow him such additional time for voting as may be necessary to provide those three consecutive hours and the employer shall grant the request.

Deduction from pay prohibited

(4) No employer shall make any deduction from the pay of any employee or impose upon or exact from him any penalty by reason of his absence from his work during the consecutive hours that the employer is required to allow him under subsection (3).

Time off best suiting convenience of employer

(5) Any time off for voting as provided in subsection (3) shall be granted at the time of day that best suits the convenience of the employer.

RETURNING OFFICERS

Appointment of R.O.

7.—(1) The Lieutenant Governor in Council shall appoint a returning officer for each electoral district.

Qualifications of R.O.

(2) A returning officer must be of voting age, a Canadian citizen and resident in Ontario.

Refusal or incapacity to act

(3) If the person appointed as returning officer under subsection (1) dies, refuses to act, is incapacitated or resigns in accordance with subsection (9) or is discharged under subsection (10) or (11), some other person may be appointed by the Lieutenant Governor in Council as returning officer.

Notification of appointment

(4) The Chief Election Officer shall notify every person appointed as returning officer of his appointment, and thereupon such person shall enter upon his duties under this Act.

Oath of R.O.

(5) Every returning officer immediately upon receiving notice of his appointment shall take the prescribed oath, faithfully to perform his duties without partiality, fear, favour or affection.

Clerical and other assistance

(6) Subject to the direction of the Chief Election Officer, every returning officer shall provide for such clerical and other assistance as is necessary in the performance of his duties.

Powers and duties of R.O.

(7) A returning officer shall consult with, advise and supervise the deputy returning officers and poll clerks in the performance of their duties and he or his election clerk or his delegate may visit and consult with the deputy returning officer and poll clerk at any polling location in the electoral district.

Instructions from C.E.O.

(8) A returning officer shall comply with any oral or written instruction received from the Chief Election Officer.

Term of office

(9) A returning officer who is appointed under this Act shall continue in office until he dies, or, with prior permission of the Chief Election Officer, he resigns, or unless he is removed from office under subsection (10) or (11).

Removal from office

(10) The Lieutenant Governor in Council may remove from office any returning officer who,

(a) has attained the age of sixty-five years; or

(b) is incapable, by reason of illness, physical or mental infirmity or otherwise, of satisfactorily performing his duties under this Act.

Idem

(11) The Chief Election Officer may remove from office any returning officer who fails to discharge competently his duties, or any of them, under this Act.

Obstruction

(12) No person shall obstruct or interfere with the returning officer or his staff or contrive any hindrance to the exercise of their rights or the performance of their duties under this Act.

ELECTION CLERK

Election clerk

8.—(1) Forthwith upon his appointment, the returning officer may appoint in writing a person who is of voting age, a Canadian citizen and resident in Ontario to be his election clerk but if upon receipt of a writ of election no person has

been appointed, the returning officer shall immediately make the appointment.

Relatives

(2) No person who is a child, grandchild, brother, sister, parent, grandparent or the spouse of the returning officer shall be appointed as election clerk without the prior approval of the Chief Election Officer.

Appointment of new election clerk

(3) The returning officer at any time and for any reason may appoint in writing a new election clerk in the place of the person previously appointed.

Duties

(4) The election clerk shall assist the returning officer in the performance of his duties, and, if the returning officer dies or is disqualified or refuses or is unable to perform his duties during an election and has not been replaced, shall act in his stead as the returning officer.

Oath of election clerk

(5) The election clerk before entering upon his duties shall take the prescribed oath.

DATES FOR CLOSE OF NOMINATIONS AND POLLING

Close of nominations and election day

9. When an election is to be held, the Lieutenant Governor in Council may appoint and proclaim a day,

(a) for the close of nominations and the grant of a poll where required, which day shall be a Thursday, that is not later than the fifty-third day and not sooner than the seventeenth day after the date of the writs of election; and

(b) for the taking of a poll, which day shall be the Thursday, that is the fourteenth day after the grant of a poll, unless that Thursday is a holiday, as defined by the *Interpretation Act*, or is declared to be a holiday by law and in that case the day fixed for the poll shall be Friday of the same week.

R.S.O. 1980, c. 219

WRITS

Writs to bear same date

10.—(1) The writs for a general election shall all be dated on the same day and shall be addressed to the returning officers.

Writs to state nomination and polling days

(2) A writ of election shall state the respective days for the close of nominations and for the polling, if required, and is returnable forthwith after the election.

(3) Every returning officer on receiving a writ for an election shall endorse thereon the date of its receipt. Endorsement on writ

(4) If a writ for an election has been issued to a person in whose stead a new returning officer has been appointed under subsection 4 (7) or under subsection 7 (3), a new writ may be issued or the new returning officer or the election clerk, if applicable, may act under the writ already issued and the validity of the proceedings prior to the new person acting may not be questioned but the new or acting returning officer may appoint a new election clerk. Where appointment superseded

PROCLAMATION

11.—(1) Forthwith after receipt of the writ of election, the returning officer shall by proclamation, declare, Proclamation by returning officer

(a) the dates, place and times during which the list of electors may be revised;

(b) the date, place and time fixed for the close of nominations of candidates and for the granting of a poll, if required; and

(c) the days and hours fixed for holding the advance polls and the general poll.

(2) The returning officer shall cause the proclamation to be printed and copies to be posted in conspicuous places on public or private property in the electoral district and the Chief Election Officer or the returning officer may arrange for the proclamation to be published in a sufficient number of newspapers to provide coverage throughout the electoral district. Posting, etc., of proclamation

POLLING DIVISIONS

12.—(1) The returning officer shall divide his electoral district into urban and rural polling divisions as directed by the Chief Election Officer and shall, on an annual basis or as directed by the Chief Election Officer, review his electoral district as to population distribution and shall, in collaboration with the clerk of each municipality contained within the electoral district, consider any changes to polling division boundaries. Polling divisions

(2) Following any revision of boundaries as may be authorized by the Chief Election Officer, the returning officer shall prepare and submit to the Chief Election Officer one complete set of typed descriptions of the polling divisions established under subsection (1). Description of polling divisions

POLLING PLACES

Polling places

13.—(1) Subject to subsection (5) and to section 14, the returning officer shall arrange for at least one polling place for each polling division in the most central or most convenient place for the electors, furnished with light and heat and such other accommodation and furniture as may be required, and if the Chief Election Officer approves, the polling place may be provided outside the limits of the polling division, such as in the case of multiple polling places established at one location.

Union of polling divisions

(2) The returning officer may unite two or more adjoining polling divisions and provide one polling place for the united divisions.

Location of polling places

(3) The poll may be situated in any public building or on private property and shall so far as is reasonably possible give access to wheelchairs.

When landlord, municipality, school board, etc., to furnish facilities

(4) Where, in the opinion of the returning officer, it is necessary to ensure to the maximum number of electors access to conveniently located polling places,

(a) a landlord of a building containing 100 or more dwelling units;

(b) a municipality;

(c) a school board; or

(d) a provincially funded institution,

shall, on the request of the returning officer made not less than fourteen days prior to polling day, make any premises under his or its control available as a polling location.

Where polling places not to be

R.S.O. 1980, c. 244

(5) The poll shall not be held in a premises licensed under the *Liquor Licence Act* or in a place of public entertainment, except as authorized by the Chief Election Officer.

Additional polling places

(6) The returning officer may provide such additional polling places in any polling division as are required having regard to the extent of the division, and the number of electors that may conveniently vote at one polling place and the returning officer shall determine how each such polling place shall be designated and an elector is entitled to vote only at the appropriate polling place.

(7) The returning officer shall prepare a list of the polling places within his electoral district showing the location of each by polling division number. List of polling places

(8) Every elector shall have free access to the poll. Access to poll

HOSPITALS, RETIREMENT HOMES, NURSING HOMES AND OTHER INSTITUTIONS

14.—(1) Where an institution for the reception, treatment or vocational training of persons who have served or are serving in the Canadian Forces or who are disabled, a hospital, a home for the aged, a nursing home or other institution of twenty beds or more, in which chronically ill or infirm persons reside or where a retirement home of fifty beds or more is situate in an electoral district, a polling place shall be provided in such institution or upon the premises. Polling places in hospitals, etc.

(2) Electors resident at an institution referred to in subsection (1) and who are entered in the list of electors may vote at such polling place and the returning officer shall arrange for the deputy returning officer and the poll clerk to attend upon the electors at their bedsides or otherwise for the purpose of receiving their ballots. Voting

(3) On the completion of their canvass of the residents, the poll officials may continue the poll in one location until full opportunity has been given for all resident electors to vote. Continuation of poll

(4) Each candidate and one of his scrutineers may be present at such a polling place except when a ballot is marked under section 55. Presence of candidate and scrutineer

QUALIFICATION OF ELECTORS

15.—(1) In an electoral district in which an election to the Assembly is to be held, every person is entitled to vote who, on the general polling day, Electors

(a) has attained eighteen years of age;

(b) is a Canadian citizen or other British subject;

(c) has resided in Ontario for the twelve months next preceding polling day;

(d) resides in the electoral district; and

(e) is not disqualified under this Act or otherwise prohibited by law from voting.

Re-enactment of (1) (b, c)

(2) Clauses (1) (b) and (c) are repealed and the following substituted therefor:

(b) is a Canadian citizen;

(c) has resided in Ontario for the six months next preceding polling day.

Effective date of re-enactment

(3) Subsection (2) does not come into force until the 1st day of July, 1986.

Evidence of person claiming to be elector

(4) For the purposes of this section, a statutory declaration by a person claiming to be entitled to vote is *prima facie* proof of the facts declared to.

Requirement to receive ballot and vote

(5) In order to receive a ballot and vote, an elector's name must appear in the list of electors or on a certificate to vote or have been lawfully added under the provisions of section 51.

PERSONS DISQUALIFIED FROM VOTING

Judges not to vote

16.—(1) No judge of any court is entitled to vote at the election.

Disqualification

(2) The following persons are disqualified from voting:

1. Every person who is an inmate in a penal or correctional institution.

2. Every person who is a patient in a psychiatric facility and in respect of whom a certificate of incompetence, issued pursuant to the *Mental Health Act*, or a declaration under the *Mental Incompetency Act* that he is a mentally incompetent person, is in effect.

R.S.O. 1980, cc. 262, 264

PROXIES

Appointment of proxy

17.—(1) Where an elector has reason to believe that he will be unable to vote at the advance poll or on polling day by reason of his,

(a) being a member of the Canadian Forces on active service as defined by the *National Defence Act*; or

R.S.C. 1970, c. N-4

(b) being employed in the business of long distance transportation by railway, air, water or motor vehicle; or

(c) business commitments or employer's directions; or

(d) being a person certified by a legally qualified medical practitioner, by certificate filed with the returning officer, to be physically incapable of attending a polling place; or

(e) being a student duly registered at a recognized education institution,

he may apply in writing to vote by proxy and appoint some other elector in the electoral district as proxy to vote for him at the election.

Term of appointment

(2) No appointment of a proxy is valid unless it is made after the date of the issue of the writ of election and no such proxy remains in force after polling day.

Limitation

(3) An elector may not act as proxy for more than two electors.

Certificate

(4) On any day up to and including the day immediately preceding polling day,

(a) a person appointed as a proxy voter under clause (1) (a), (b), (d) or (e); and

(b) a person appointing a proxy under clause (1) (c) and the person appointed,

shall present the application to vote by proxy and the appointment in the prescribed form to the returning officer or a revision assistant of the electoral district.

Idem

(5) The returning officer or revision assistant shall examine the appointment and, on being satisfied as to the reason for a proxy being appointed and the eligibility and qualifications of the persons appointing the proxy and the person so appointed, shall require the latter to make a declaration in the prescribed form before issuing a certificate to vote.

Certificate to be presented

(6) A person appointed as a proxy voter must present a certificate to vote, signed by the returning officer or revision assistant, to the deputy returning officer at the polling place in order to receive a ballot and to vote.

Proxy may vote in own right

(7) An elector who has been appointed as a voting proxy is entitled to vote in his own right in his own polling division and, if within the same electoral district, may apply to the returning officer to have his name transferred to the polling list of the place where the proxy vote is to be cast or to have the name of

the person appointing the proxy transferred to the polling list of his polling place.

Cancellation of appointment

(8) An elector who has appointed a voting proxy may cancel such appointment by returning the proxy certificate to the returning officer for cancellation or by notifying the returning officer and the voting proxy in writing of such cancellation.

Not more than one proxy

(9) Not more than one person shall be appointed a voting proxy on behalf of a person appointing the proxy at any election.

ENUMERATION

Enumeration

18.—(1) Immediately following the issue of the writ for an election, the Chief Election Officer shall designate the period during which an enumeration of electors shall take place and shall advise the returning officer of the date on which the enumeration shall begin.

Nomination of enumerators

(2) After the issue of the writ and up to seventy-two hours before the enumeration is to begin,

(a) the person who apparently will be the candidate at the election of the registered party represented by the government of the day; and

(b) the person who apparently will be the candidate at the election of a different political interest, the candidate for which, at the next preceding provincial election, received the highest number of votes or the next highest number of votes, as the case may be,

shall furnish the returning officer with lists of nominations for appointment as enumerators.

Selection of enumerators

(3) The returning officer shall select and appoint two persons of voting age as enumerators for each polling division, and with the approval of the Chief Election Officer may select persons at least sixteen years of age, and shall make such appointments as are necessary so that the enumerators for each polling division represent as far as possible two different political interests.

Idem

(4) If, seventy-two hours before the enumeration is to begin, sufficient names from which to select and make the appointment of the enumerators have not been received, the returning officer shall make such appointments as are necessary to enumerate the electoral district.

Candidates

(5) No person who apparently will be a candidate at the election shall be an enumerator.

Enumerators; oath, supplies

(6) Forthwith upon their appointment and before commencing their duties, the enumerators shall take the prescribed oath and the returning officer shall supply each pair of enumerators with sufficient materials for the proper conduct of the enumeration.

Enumerators to act jointly

(7) The two enumerators shall act jointly and not individually in relation to each process in the preparation of the list of electors and in case of any disagreement they shall report the matter to the returning officer whose decision shall be final.

Hours of enumeration

(8) The enumerators shall conduct their enumeration between the hours of 9 a.m. and 9 p.m. and, unless they have obtained the information required or unless an occupant of any dwelling unit has stated that no other elector remains to be enumerated, they must make a second visit between the hours of 5 p.m. and 7 p.m. and, if necessary, a third visit may be made between the hours of 7 p.m. and 9 p.m.

Enumerator's record

(9) Each name and address obtained by the enumerators during their door-to-door canvass or as directed by the returning officer shall be entered on a record which shall be signed by both enumerators and a copy thereof left at each dwelling unit.

Notice of inability to obtain information

(10) Where, after making the required number of visits as set out in subsection (8), the enumerators are unable to obtain the information necessary, they shall leave at such dwelling unit the prescribed notice of their inability to obtain information.

Enumerators to have free access

(11) The enumerators shall at all reasonable times and upon producing proper identification have free access for the purposes of enumeration to the entrance door of each dwelling unit in any building having more than one dwelling unit.

Obstruction, etc., of enumerators

(12) No person shall obstruct or interfere with the enumerators or contrive any hindrance in the exercise of their rights or in the performance of their duties under this Act.

Replacement of enumerator

(13) The returning officer may at any time replace any enumerator by appointing another to act in his place and, upon receiving such notice in writing from the returning officer, the enumerator so replaced shall forthwith deliver to the returning officer all credentials, papers and materials which have been supplied.

Forfeiture of right to payment

(14) An enumerator who neglects, omits or refuses to perform any of his duties under this Act or who refuses to comply

with any direction in writing from the returning officer may forfeit his right to payment for any service or part thereof already rendered.

LIST OF ELECTORS

Preparation of list of electors

19.—(1) The enumerators, immediately after the completion of the canvass of their polling division, from their records shall prepare a list of electors legibly typewritten in the prescribed form,

(a) under headings of thoroughfares by name and in numerical order of residence where such names and numbers are in effect;

(b) under geographic area or municipal headings in alphabetical order by surname; or

(c) as directed by the returning officer.

Delivery of list to R.O.

(2) Not later than four days from the date of their appointment, the enumerators shall,

(a) certify the total number of names contained in the list; and

(b) unless otherwise directed by the returning officer, deliver the list to the returning officer together with all used and unused material.

Disposition of list

(3) On receipt of and having accepted the list of electors from each pair of enumerators, the returning officer shall arrange for,

(a) one copy of the list to be posted by the enumerators in urban areas in a conspicuous place in their polling division;

(b) one copy of the list to be retained in the returning office;

(c) one copy to be furnished as soon as possible to each candidate in the electoral district; and

(d) up to twelve copies of the list to be furnished to each constituency association or candidate in the electoral district.

Notification of omitted electors

(4) Following preparation of the list of electors by the enumerators and up to and including the fourteenth day before

polling day, any person who has knowledge of the fact that the name of an elector resident in an urban polling division has been omitted from the list, may so notify the returning officer.

Special enumerators

(5) The returning officer may appoint pairs of special enumerators for the purposes of subsection (6) from among those who have already acted as such for the pending election or may appoint others in the manner provided by section 18.

Enumeration

(6) The returning officer, before the preparation of the polling lists, shall cause special enumerators to call once at the address of any elector referred to in subsection (4) and to enumerate such elector and any other electors at that address whose names were also omitted.

Addition to list of electors

(7) On completion of the enumeration, the returning officer shall cause any names obtained under subsection (6) to be added directly to the list of electors compiled during the original enumeration or shall direct the special enumerators to prepare an additional list of electors by polling division number, in the prescribed form.

Copies

(8) The returning officer shall supply to each candidate, on request, a copy of each list referred to in subsection (7).

COMPLAINT AGAINST NAME ON LIST

Complaint for wrongful entry on list

20.—(1) On any day up to and including the fourteenth day before polling day an elector may file with the returning officer a complaint, on the prescribed form, that the name of a person who should not be included, has been included in the list of electors.

Notice to person objected to

(2) The returning officer, upon receipt of the complaint, shall send by registered mail to the person objected to at the address shown in the list and to such other address, if any, as may be mentioned in the complaint, a copy of the complaint along with a notice requiring such person or his representative to appear before the returning officer on a day to be named in the notice and a copy of the notice shall be given to the complainant.

Hearing of complaint

(3) On the day named in the notice and in the presence of any of the persons concerned with the complaint, the returning officer may hear an explanation by the person who filed the complaint as to the facts alleged and what is alleged by the person or by the representative of the person against whom the complaint was made.

Decision

(4) The returning officer shall make such decision concerning the complaint as is warranted under the circumstances and that decision shall be final.

REVISION

Application for additions, corrections, etc., to list

21.—(1) Up to and including the day immediately preceding polling day, the returning officer shall consider all applications concerning the list of electors or the polling list with regard to the application for a proxy certificate, addition of a name, the correction of an error or the deletion of a name and his decision is final.

Revision assistants

(2) The returning officer may appoint his election clerk to assist him and, subject to the approval of the Chief Election Officer, may appoint additional revision assistants to act in the returning office or at other fixed locations and every such assistant shall have the same qualifications as the returning officer and the same powers at the revision as the returning officer.

Revising agents

(3) The returning officer may, subject to the approval of the Chief Election Officer, appoint two persons as revising agents for the purpose of enumerating qualified electors of a particular area, section or building containing multiple dwelling units within the electoral district who were missed by the enumerators.

Oath

(4) Every such assistant or agent appointed under subsection (2) or (3) upon being appointed shall take the prescribed oath.

Grounds must be sufficient

(5) Before making any addition, correction or deletion in the list of electors, the returning officer shall be satisfied that the applicant has provided sufficient grounds for the action requested and that the person appearing before him understands the effect of any statements made in the application.

Procedure where application refused

(6) If it appears to the returning officer that an application under subsection (1) should be refused, the decision shall be endorsed on the application along with his reasons and the applicant informed.

Irregularity not to affect result of election

(7) An irregularity in the preparation or revision of the list of electors is not a ground for questioning the validity of an election.

Interpreter where necessary

(8) Where the returning officer or his revision assistant does not understand the language spoken by an applicant or where the applicant is deaf, the applicant has the right to the assistance of an interpreter who, after taking the prescribed oath, may translate any necessary declarations, documents or lawful

questions put to the applicant and the answers, but in the event of inability to secure an interpreter, the application may for the time being, be refused.

List of persons issued certificate

(9) The returning officer shall, on request made to him, provide to each candidate of a registered party a list of persons to whom a certificate to vote has been issued up to the time the request is made.

Certificate to be presented

(10) A person added to the polling list under section 22 or 24 must present a certificate to vote, signed by the returning officer or revision assistant, to the deputy returning officer at the polling place in order to receive a ballot and to vote.

Deletion of name from list

(11) A person whose name appears in a list of electors and who wishes to have the entry related to him deleted, must appear before the returning officer and complete a declaration to that effect.

ADDITIONS

Application for certificate to vote

22.—(1) Up to and including the day immediately preceding polling day, for the purpose of obtaining a certificate to vote, an elector whose name does not appear in the list of electors may apply in person to the returning officer or his assistant as set out in section 21 or have some other person apply on his behalf and by statutory declaration substantiate his identity and qualifications as an elector.

For whom elector may act

(2) An elector acting on behalf of another under subsection (1) may do so for his child, grandchild, brother, sister, parent, grandparent or spouse but may act for only one additional person and a person who is not an elector may act for only one elector.

CORRECTIONS

Corrections to list

23.—(1) The returning officer or his assistant, as set out in section 21, shall consider all applications for correction of mistakes in names or addresses in the list of electors and upon satisfactory evidence being furnished to him may make the necessary corrections.

Mistake in name, etc.

(2) A mistake in the name or the address of an elector shown in the polling list is not a ground for questioning the eligibility to vote of the elector, provided that at the time of voting the elector takes the prescribed oath, if required to do so by the deputy returning officer.

TRANSFERS

Change of residence

24.—(1) Up to and including the day immediately preceding polling day, an elector whose name appears on a polling list for the pending election and who has moved may apply in person to the returning officer or his assistant as set out in section 21 or have some other person apply on his behalf to have his name included in the polling list for the polling division where he now resides.

Proxy voters, election officials

(2) Where an elector whose name appears on a polling list for the polling division where he resides and,

(a) has appointed a proxy voter whose name appears on a different list in the same electoral district; or

(b) has been appointed,

(i) to cast a proxy vote at a polling place other than his own but in the same electoral district, or

(ii) to act as a deputy returning officer, poll clerk or scrutineer at a polling place other than his own but in the same electoral district,

an application may be made to the revising official for a certificate to vote at the other polling place.

Notice of transfers

(3) The revising official whenever possible, shall advise the returning officer of the original electoral district, if applicable, or the deputy returning officer of the original polling place of any transfer made.

POLLING LISTS

Official polling list

25.—(1) The returning officer shall prepare the official polling list for each polling division by attaching to a copy of the original list of electors, a copy of any additional lists of electors prepared under his direction.

Copy to D.R.O.'s

(2) The returning officer shall certify and supply a copy of the official polling list to each deputy returning officer for use at the advance polls and on regular polling day.

CANDIDATES

Who may be candidate

26.—(1) Every person is qualified to be a candidate who, at the time of signing the consent to nomination,

(a) is of voting age;

(b) is a Canadian citizen or other British subject;

(c) has resided in Ontario for the twelve months next preceding polling day; and

(d) is not disqualified by the *Legislative Assembly Act* or by any other Act. R.S.O. 1980, c. 235

(2) Clauses (1) (b) and (c) are repealed and the following substituted therefor: Re-enactment of (1) (b,c)

(b) is a Canadian citizen;

(c) has resided in Ontario for the six months next preceding polling day.

(3) Subsection (2) does not come into force until the 1st day of July, 1986. Effective date of re-enactment

(4) No person who has been engaged as a returning officer, election clerk, enumerator or revision assistant at the revision of any list of electors to be used at the election, is eligible as a candidate. Who may not be candidate

(5) No person who has been found guilty within eight years of an election of a corrupt practice or of an offence relating to an election is eligible to be a candidate at the election. Idem

(6) A candidate may undertake any of the duties that his scrutineer might have undertaken if appointed, or may assist his scrutineer in the performance of such duties, and may be present at any place at which his scrutineer may attend in pursuance of this Act. Right of candidate to undertake duties of scrutineer

CLOSE OF NOMINATIONS

27.—(1) The close of nominations of candidates shall be 2 p.m. of the day stated as such in the writ of election. Time for close of nominations

(2) One hour before the close of nominations, the returning officer shall make or cause to be made a pronouncement in the prescribed form and shall read or cause to be read publicly the writ of election. Procedure on nomination day

(3) A candidate may be nominated in one electoral district only and each candidate shall be nominated by a separate nomination paper which shall include or be accompanied by his consent in writing to the nomination. Separate nomination papers, etc.

Contents of nomination papers

(4) The nomination paper of a candidate shall state his name and address of residence and shall be signed by, or accompanied by the signatures of at least twenty-five electors of the electoral district and an elector may sign the nomination papers of more than one candidate.

Deposit

(5) A deposit of $200 in cash or by certified cheque made payable to the Chief Election Officer shall be handed to the returning officer at the time the nomination paper is filed.

Refund

(6) Where a candidate receives at least 10 per cent of the valid ballots cast at the election, the deposit under subsection (5) shall, in the case of a cash deposit, be refunded to the candidate and, in the case of a certified cheque, be refunded to the issuer of the cheque.

How name to be shown on ballot

(7) Subject to subsection (8) and to subsections 34 (2) and (5), at the time of filing his nomination papers, a candidate shall state in writing to the returning officer how he wishes his name to be shown on the ballot.

Similarity of names

(8) Where the given names and surname requested to be shown on the ballot are identical or so nearly identical so as to create the possibility of confusion with the names requested to be shown on the ballot by another candidate whose nomination paper has already been submitted or certified, the returning officer shall immediately communicate the facts to the candidates and to the Chief Election Officer who shall consult with the candidates in question and resolve how each name is to be shown on the ballot, and unless he has received the decision of the Chief Election Officer before 2 p.m. on the day following the day set for the close of nominations, the returning officer shall reject, of those nomination papers in question, all but the nomination paper that was submitted first and so notify immediately any candidates concerned.

Registration under R.S.O. 1980, c. 134

(9) The nomination paper shall include or be accompanied by either a statement by the candidate that he has filed, or an undertaking by the candidate that, prior to polling day, he will file an application for registration with the Commission on Election Contributions and Expenses under the *Election Finances Reform Act*.

When nomination papers to be filed

(10) The nomination paper shall be filed with the returning officer at his office at any time during the seven days immediately preceding closing day or at any time up to the close of nominations on that day.

Certificate of R.O. as to regularity

(11) Where the nomination paper is filed with the returning officer during the seven days immediately preceding, or not

later than 11 a.m. of the closing day, the returning officer shall then and there examine the paper and, if he is satisfied of the regularity thereof, he shall so certify in writing, and his certificate is final, and the validity of the nomination is not open to question upon any ground whatsoever.

Nomination paper

(12) Where the nomination paper is filed with the returning officer after 11 a.m. of the closing day and before the time fixed for the close of nominations,

acceptance

(a) the returning officer shall accept and examine the nomination papers; and

rejection

(b) if on examination of the nomination paper it appears to the returning officer that the nomination is invalid for any reason, he shall communicate the facts to the candidate and to the Chief Election Officer but shall not reject the nomination unless the Chief Election Officer authorizes the rejection not later than 2 p.m. on the day following, in which case the returning officer shall give notice of the rejection immediately by registered mail to the rejected candidate and all other candidates.

Candidate need not be present

(13) It is not necessary for a candidate to be present when his nomination paper is filed with the returning officer.

Receipt

(14) The returning officer shall issue a receipt for any nomination paper accepted by him under subsections (11) and (12).

Election by acclamation

28. If, at the close of nominations, only one candidate has filed a nomination paper, the returning officer shall close the election and declare such candidate to be duly elected and shall make his return to the Chief Election Officer as provided by section 80.

NOTICE OF POLL

Grant of poll

29.—(1) If more than one candidate is nominated, the returning officer shall grant a poll for taking the votes.

Notice of grant of polls

(2) The returning officer shall cause the prescribed notice of poll to be printed and the notice shall be posted in conspicuous public places in the electoral district and at least one copy shall be posted at each polling place on the days of the advance poll and the general poll.

WITHDRAWAL OF CANDIDATE

Withdrawal of candidate after nomination

30.—(1) A candidate may withdraw at any time after filing his nomination paper and up to 9 a.m. of the day immediately preceding polling day by delivering to the returning officer the prescribed notice of withdrawal signed by himself in the presence of a subscribing witness.

Idem

(2) In the case of a candidate withdrawing after the close of nominations,

(a) if there remains but one candidate, the returning officer shall close the election and declare such candidate to be duly elected and shall make his return to the Chief Election Officer as provided by section 80; or

(b) if there remains two or more candidates and only if the ballots have been printed, the returning officer, if possible, shall cause every deputy returning officer to be notified forthwith of the withdrawal, and notice of the withdrawal shall be posted in a conspicuous place in every polling place in the electoral district, and any ballots cast for such candidate who has so withdrawn are void and shall be considered as rejected ballots.

Consequences of withdrawal

(3) Where a candidate withdraws under subsection (1),

(a) any votes cast for him are void; and

(b) his deposit is forfeited.

DEATH OF CANDIDATE

Death of candidate

31.—(1) If a candidate dies after being nominated and before the close of the poll, the returning officer shall suspend the election and the Chief Election Officer shall fix new days for the nomination of candidates and for polling in that electoral district but any certified nominations may, at the option of the candidate nominated, remain valid.

Return of deposit on death of candidate

(2) The deposit of a candidate who dies before the close of the poll shall be returned to the personal representative of the candidate.

SCRUTINEERS

Appointment of scrutineer

32.—(1) A candidate or a person designated in writing by him, which designation is filed with the returning officer, may

appoint any person at least sixteen years of age to be a scrutineer for the candidate and to be present at any place at which a scrutineer may attend under this Act.

When scrutineer may not challenge

(2) A scrutineer who is not an elector may not challenge the right to vote of any elector at a polling place.

Number of scrutineers in polling place

(3) Not more than one scrutineer for each candidate at any one time shall be permitted to remain in the polling place during the time the poll is open, and at the counting of the votes.

Non-attendance of scrutineers

(4) Where expressions are used in this Act that require or authorize any act to be done in the presence of the scrutineers of the candidates, the non-attendance of any scrutineer does not invalidate the act.

BALLOT PAPER

Ballot paper

33.—(1) The paper used for printing the ballots shall be as approved and ordered by the Chief Election Officer and shall be manufactured to contain a special thread or watermark so placed as to run through each ballot.

Declaration by manufacturer

(2) The manufacturer of the paper shall make a declaration that none of the paper so manufactured will be supplied to any person other than the Chief Election Officer and upon delivery of the paper the Chief Election Officer shall cause the number of sheets received to be counted and a receipt issued to the manufacturer.

Custody of ballot paper

(3) The ballot paper shall be kept under lock and key in the custody of the Chief Election Officer.

BALLOTS

Uniformity

34.—(1) All ballots shall be of the same description and as nearly alike as possible.

Form of ballot

(2) The names of the candidates shall be shown in capital letters on the ballot in order of their legal surnames, and, subject to subsection 27 (8), alphabetically arranged, with given names preceding the surnames, with the surnames in bold type, and with consecutive numbers preceding each candidate's name, and at his request any sobriquet or an abbreviation or familiar form of a given name may be used in lieu of a candidate's legal given name or names.

Idem

(3) A circular space shall be shown on the ballot horizontally aligned with each candidate's name.

Idem

(4) The circular spaces, numbers, names of the candidates and any other information required under subsection 27 (8) shall be the natural colour of the ballot paper and the remainder of the face of the ballot shall be black.

Idem

(5) Subject to subsection 27 (8), there shall not be included with any candidate's name on the ballot any occupation, title, honour, decoration, degree, brackets or quotation marks.

Numbering of ballots

(6) The ballots shall be numbered consecutively on the stubs and shall be stapled or stitched into units as determined by the returning officer.

Printing of ballots

35.—(1) The Chief Election Officer or the returning officer shall cause to be printed on the approved paper a sufficient number of ballots for the election in the electoral district.

Printer's name, etc.

(2) The ballots shall bear upon the back the name of the electoral district, the date of polling and the name of the printer, and the printer shall provide to the returning officer the prescribed affidavit as to the number of sheets of ballot paper received and the disposition thereof including the total number of ballots printed and delivered to the returning officer.

Count of ballots and affidavit

(3) The returning officer shall immediately make a count of the ballots received from the printer and shall take the prescribed affidavit and forward it to the Chief Election Officer along with the affidavit referred to in subsection (2).

Supply to D.R.O.

36.—(1) The returning officer shall supply each deputy returning officer before the polling day with a ballot box, a certified copy of the polling list, the materials provided by the Chief Election Officer necessary for the proper conduct of the poll and a sufficient number of ballots for the electors at the polling place.

Record of quantity of ballots provided

(2) The returning officer shall specify in writing to each deputy returning officer the quantity of ballots provided and record their serial numbers and the record shall be forwarded to the Chief Election Officer with the other documents required to be forwarded at the close of the election.

Count of ballots by D.R.O.

(3) The deputy returning officer shall count and verify the quantity of ballots received from the returning officer and at the close of the poll forward a statement of such count to the returning officer along with the other poll documents and election material to be so forwarded.

BALLOT BOXES

Ballot boxes to be supplied

37.—(1) The Chief Election Officer shall supply each returning officer with as many ballot boxes as are required for the conduct of the election.

How made

(2) Every ballot box shall be so constructed and sealed that on polling day the ballots can be deposited therein but cannot be withdrawn without unlawfully unsealing the box or without evidence remaining of such tampering.

VOTING SCREENS

Voting screens to be furnished

38.—(1) The returning officer shall furnish each deputy returning officer with at least two voting screens.

Privacy when marking ballots

(2) The deputy returning officer shall ensure that the voting screens at the polling place are positioned so that electors may mark their ballots with maximum privacy and without other persons being able to see how they are marked.

One elector only at a time

(3) Except as provided by sections 14 and 55, not more than one elector shall be permitted to use a voting screen at any one time.

POLL OFFICIALS

Nomination of D.R.O. and poll clerk

39.—(1) At least seven days before polling day, lists of names of electors in the electoral district who are not candidates may be furnished to the returning officer,

(a) as potential deputy returning officers, by the candidate of the registered party represented by the government of the day; and

(b) as potential poll clerks, by the candidate of a different political interest, the candidate for which at the next preceding provincial election received the highest number of votes or the next highest number of votes, as the case may be.

Appointment of D.R.O. and poll clerk

(2) From the lists furnished to him as provided by subsection (1), the returning officer shall select and appoint a deputy returning officer and a poll clerk for each polling place so that they represent two different political interests.

Insufficient nominations

(3) If sufficient names from which to select and make the appointment of the poll officials have not been received, the returning officer shall make such appointments as are necessary.

Oath

(4) Deputy returning officers and poll clerks before acting shall take the prescribed oath and their appointment shall be endorsed upon or attached to the poll record.

Duties of poll clerk

(5) As directed by the deputy returning officer, the poll clerk shall assist the deputy returning officer in the performance of the duties of his office and shall obey his orders.

Forfeiture of right to payment

(6) Deputy returning officers or poll clerks who neglect, omit or refuse to perform any of their duties under this Act may forfeit their right to payment for any service already rendered.

Death or absence of D.R.O.

(7) In case of the death, illness, absence, refusal or neglect to act, or in case from any cause the deputy returning officer becomes unable to perform his duties, until another deputy returning officer is appointed the poll clerk shall act as deputy returning officer and perform all the duties and is subject to all the obligations of that office, without taking a new oath.

TIME OF GENERAL POLL

Hours of polling generally

40.—(1) Except as provided by subsections (2), (3) and (4), the general polls at every election to the Assembly shall open at 9 a.m. and close at 8 p.m. of the same day.

In Central Time Zone

(2) In an electoral district that lies entirely west of the meridian of 90° W. longitude the general polls shall open at 8 a.m. and close at 7 p.m. of the same day.

C.E.O. may establish different hours

(3) The Chief Election Officer may at his discretion establish any period of eleven consecutive hours on the general polling day for voting in an electoral district or part thereof.

When voting not commenced or interrupted

(4) If for any reason, voting at a polling place is not commenced at the proper time or is interrupted during the polling hours, the Chief Election Officer shall be advised by the returning officer and at his discretion, the Chief Election Officer shall,

(a) extend the closing time; or

(b) resume the polling on the following day at 9 a.m. and continue the same from day to day if necessary, until the poll has been open with free access to the electors for eleven hours in total.

PRESERVATION OF THE PEACE

Assistance by justices and police officers

41. A returning officer or deputy returning officer may require the assistance of justices of the peace, police officers and other persons to aid him in maintaining peace and order at the election and may appoint as many such other persons as he considers necessary.

SECRECY OF PROCEEDINGS

Who may be in polling places

42.—(1) In addition to any elector or electors in the process of voting, except as provided by sections 4, 7, 14, 44 and 55, the only persons permitted to remain in a polling place during the time the poll remains open and at the counting of the ballots are the deputy returning officer, the poll clerk, the candidates and not more than one scrutineer for each candidate at any one time.

Oath of secrecy

(2) Every deputy returning officer, poll clerk, candidate or scrutineer authorized to attend at a polling place shall take an oath of secrecy.

Interference with electors

(3) No person shall attempt to obtain at a polling place information as to the candidate for whom an elector is about to vote or interfere or attempt to interfere with an elector in a polling place.

Elector not to display ballot

(4) Subject to sections 14 and 55, an elector shall not display his ballot to any person so as to indicate how he has voted.

Inducing elector to display ballot

(5) No person shall, directly or indirectly, induce or attempt to induce an elector to display his ballot to any person so as to indicate how he has voted.

Communicating information as to how elector is voting

(6) No person shall communicate any information obtained at a polling place as to the candidate for whom an elector is about to vote or has voted or whether he declined to vote.

No person compellable to disclose his vote

(7) In any legal proceedings no person may be compelled to state for whom he voted or whether he marked his ballot or not.

VOTING AT ONE PLACE ONLY

Person to vote in one division only

43. If the name of a person entitled to vote is entered on the polling list for more than one polling division he shall nevertheless vote only at one polling place.

ADVANCE POLLS

Advance polls

44.—(1) For the purpose of receiving the votes of electors who expect to be unable to vote on polling day in the electoral district for which their names appear on the polling list or on certificates to vote, advance polls shall be open,

(a) in an office of the returning officer, provided that the ballots have been printed, on the 12th, 10th, 9th, 8th, 6th and 2nd day preceding polling day; and

(b) at designated other locations on the Thursday, Saturday and Monday immediately preceding polling day.

Advance polling places

(2) The returning officer shall provide as many advance polling places under clause (1) (b) as are approved by the Chief Election Officer and shall select locations which give access to wheelchairs.

Time of poll

(3) The advance polls in an electoral district shall be open from 11 a.m. to 8 p.m. or during such hours as are determined by the Chief Election Officer.

Notice of polls

(4) At least three days prior to the first advance poll day under clause (1) (a), the returning officer shall cause a notice of the days, times and locations of the advance polls to be published in a sufficient number of newspapers to provide coverage throughout the electoral district.

List of electors who have voted

45.—(1) Forthwith after the close of the poll each day, the deputy returning officer shall provide to the returning officer a list of the names, addresses and polling division numbers of all electors who have voted or forfeited their right to vote and the returning officer before polling day shall furnish every candidate in the electoral district with a copy of such list.

Noting other D.R.O. lists

(2) The returning officer shall indicate in the polling list to be supplied to each deputy returning officer for polling day the name of each elector who at the advance poll has voted or forfeited his right to vote.

Candidates and scrutineers

(3) Candidates or their scrutineers are not entitled to be present when votes are cast at an advance poll held in the office of a returning officer.

Counting of ballots

(4) On the general polling day, the deputy returning officer and the poll clerk shall, at the hour fixed for the closing of the general poll, and in the presence of such of the candidates or their scrutineers as are present, proceed to count the ballots cast.

(5) Except as in this section otherwise provided, the provisions of this Act relating to secrecy of proceedings, voting procedures, counting of the ballots and the reporting of the results apply with necessary modifications to voting under this section. Application

(6) The vouching provisions of section 51 do not apply at an advance poll. Vouching not to apply at advance poll

CERTIFICATE OF ERROR

46. The returning officer may certify for addition to the list of electors, the name of any elector omitted in error, Certificate of error

(a) upon the elector producing to the returning officer or to the deputy returning officer proof of enumeration; or

(b) upon the returning officer being satisfied that such person was enumerated or was added at the revision,

and the returning officer shall furnish each candidate with a list of such certifications.

PROCEDURE AT THE POLL

47.—(1) The deputy returning officer and poll clerk shall attend at the polling place at least thirty minutes before the hour fixed for opening the poll. Attendance of D.R.O. and poll clerk at polling place

(2) Any scrutineers present during the fifteen minutes before the opening of the poll are entitled to have the ballots counted in their presence and to inspect all other materials relating to the poll. Counting ballots at opening of poll

(3) The deputy returning officer immediately before opening the poll shall show the empty ballot box to any persons present and shall then seal the box as prescribed by the Chief Election Officer in such manner as to prevent its being opened without breaking the seals. D.R.O. to show box empty, then seal it

(4) Except as provided in subsection 14 (2) and subsection (5) of this section, the deputy returning officer shall then place and keep the ballot box on a desk, counter or table or otherwise position it above floor level in full view of all present and shall keep it sealed until the close of the poll. Placement of ballot box

(5) The ballot box may be moved by the poll officials to facilitate voting by an elderly or disabled elector but where the box is so moved it may be accompanied by any scrutineer present and a record of any such action and any objection taken by When ballot box may be moved

a scrutineer shall be made in the poll record opposite the name of the elector.

Statement of name, etc., by elector

48.—(1) Every elector upon entering the room or area where the poll is being held shall state his name and place of residence to the deputy returning officer, which particulars shall be entered in the poll record by the poll clerk.

D.R.O. to initial back of ballot

(2) Every elector who is entitled to vote shall receive from the deputy returning officer a folded ballot on the back of which the deputy returning officer has previously put his initials, so placed that when the ballot is refolded they can still be seen and upon the request of the elector the deputy returning officer shall instruct the elector in the manner of marking and how to refold the ballot.

Where oath may be required

(3) If a deputy returning officer has reason to believe that a person offering to vote is not an elector or has already voted, or is attempting to vote under a false name or designation or is personating or representing himself falsely as being upon the list, or when requested by a candidate or a scrutineer who is an elector, the deputy returning officer shall administer the prescribed oath to the elector.

Where elector alleges he has been personated

(4) If a person representing himself to be an elector applies for a ballot after another person has voted as such elector, he is entitled to receive a ballot after taking the precribed oath and otherwise establishing his identity to the satisfaction of the deputy returning officer, and a note shall be made in the poll record to that effect and of the oath having been taken and of any objections made on behalf of any, and of which, of the candidates.

Elector refusing to take oath

(5) An elector who has refused to take an oath when required so to do forfeits his right to vote.

Entry to be made in poll record

(6) The poll clerk shall indicate in the poll record opposite the name of each elector, as applicable, if an oath was administered or refused.

MARKING A BALLOT

Mode of marking ballot

49.—(1) The elector on receiving a ballot shall forthwith proceed to one of the voting screens and there, using a pencil or pen indicate the candidate of his choice by marking one of the circular spaces on the ballot with a cross or other mark in any colour.

Mode of folding and depositing ballot

(2) The elector shall then refold his ballot so that the initials on the back are visible and hand it to the deputy returning offi-

cer who shall without unfolding it ascertain by examining his initials that it is the same ballot issued to the elector and shall then, in full view of all present, including the elector, place it in the ballot box, and thereupon the poll clerk shall indicate in the poll record that the elector has voted.

Elector to leave polling place after voting

(3) An elector whose ballot has been placed in the ballot box shall be deemed to have voted and shall forthwith leave the polling place.

VOTING CERTIFICATES

Surrender of certificate

50.—(1) An elector voting under the authority of a certificate issued by the returning officer or revision assistant shall surrender it to the deputy returning officer at the polling place before receiving a ballot.

Entry in poll record

(2) The deputy returning officer or poll clerk shall record in the poll record, opposite the name of the elector, the words "voted under certificate" and shall file the certificate in the envelope of election documents to be returned to the returning officer.

VOUCHING

Where elector's name omitted in rural polling division

51.—(1) In a rural polling division, other than at an advance poll, an elector whose name was omitted from the polling list, may apply to the deputy returning officer to have his name added to the list and his name shall be added,

(a) if he takes the prescribed oath as to his eligibility to vote; and

(b) if he is accompanied by an elector who is a resident in the same polling division and whose name is on the polling list and who vouches on oath that,

(i) he knows the person whose name has been omitted, and

(ii) he believes such person to be qualified to be entered on the list.

May vouch for more than one elector

(2) An elector vouching, as provided by subsection (1), may do so for more than one elector.

Name to be added to list

(3) The deputy returning officer after taking the prescribed oath shall cause the applicant's name to be added to the polling list and entered in the poll record with the words "vouched for" written thereafter.

Right to vote

(4) The applicant, upon taking the oath and being vouched for, is entitled to vote.

BALLOT TAKEN FROM POLL

Elector not to take ballot from polling place

52. An elector who has received a ballot shall not take it out of the polling place and any elector who leaves without delivering the ballot to the deputy returning officer forfeits his right to vote and the deputy returning officer shall cause an entry to be made in the poll record that the elector took his ballot out of the polling place.

DECLINED BALLOT

Declined ballot

53. An elector who has received a ballot and returns it to the deputy returning officer declining to vote, forfeits his right to vote and the deputy returning officer shall immediately write the word "declined" upon the back of the ballot and preserve it to be returned to the returning officer and shall cause an entry to be made in the poll record that the elector declined to vote.

CANCELLED BALLOT

When ballot may be replaced

54. A ballot that,

(a) has been improperly printed;

(b) has been inadvertently dealt with in such manner that it cannot be used; or

(c) has been issued to an elector who has marked it other than how he intended to mark it or for any reason objects to it and returns it to the deputy returning officer requesting another,

may be replaced with another ballot by the deputy returning officer who shall immediately write the word "cancelled" upon the back of the first ballot and preserve it to be returned to the returning officer and shall cause an entry to be made in the poll record stating the reason for cancelling the ballot.

DISABLED ELECTORS

Disabled elector

55.—(1) On the application of any elector who is unable to read or who is disabled and thereby prevented from voting in accordance with the other provisions of this Act, the deputy returning officer may assist the elector to the voting screen or if the elector making the application takes an oath as to his inability to vote without assistance, shall thereafter assist the

elector at the voting screen by marking his ballot in the manner directed by the elector in the presence of the poll clerk and of no other person, and place the ballot in the ballot box.

Ballot marked by friend

(2) The deputy returning officer shall either deal with an elector mentioned in subsection (1) in the manner provided therein or, at the request of such elector who has taken the prescribed oath and is accompanied by a friend, shall permit the friend to accompany the elector to the voting screen and there mark the elector's ballot for him.

Declaration to be made by friend

(3) Any friend who is permitted to mark the ballot of an elector under subsection (2) shall first be required to take an oath that he will keep secret the name of the candidate for whom the ballot was marked.

May act as friend once only

(4) No person shall be allowed to act as the friend of more than one elector mentioned in subsection (1) at any polling place, other than a polling place established under section 14.

Entry in poll record

(5) The deputy returning officer shall enter in the poll record opposite the elector's name the reason why the ballot was marked by him or by a friend of the elector.

INTERPRETER AT THE POLL

When language spoken by elector not understood

56. Where neither the deputy returning officer nor the poll clerk understands the language spoken by an elector or where the elector is deaf, the elector has the right to the assistance of an interpreter who, after taking the prescribed oath, may translate any necessary declarations, documents or lawful questions put to the elector and the answers, but in the event of inability to secure an interpreter, the elector shall, for the time being, be refused a ballot.

COUNTING THE BALLOTS

Duties of D.R.O. at close of poll

57.—(1) Immediately after the close of the poll, the deputy returning officer shall count the number of electors who appear by the poll record to have voted and on such record shall enter that number and draw a bold double line immediately below the name of the elector who voted last, and shall sign his name thereto, then, in the presence and in full view of the persons entitled to be present, as set out under subsection 42 (1), he shall open the ballot box and proceed to count the number of valid ballots cast for each candidate and all other ballots therein giving full opportunity to those present to see each ballot and observe the procedure.

What may be accepted as valid ballot

(2) Only a ballot which was supplied to the elector by the deputy returning officer and with only one of the circular spaces marked shall be accepted as a valid ballot at the count.

Where ballot not to be rejected

(3) No word, letter or mark written or made or omitted to be written or made by the deputy returning officer on a ballot warrants its rejection.

Objections to be noted

(4) The deputy returning officer shall make a note in the poll record of every objection taken to a ballot by a candidate or scrutineer and shall decide the objection, subject to review as hereinafter provided.

Numbered and initialled

(5) Each objection shall be numbered and a corresponding number placed on the back of the ballot and initialled by the deputy returning officer.

How ballots to be counted

58.—(1) All accepted ballots indicating the votes given for each candidate respectively and all unmarked, rejected, cancelled, declined and unissued ballots shall be counted and sealed in separate envelopes by the deputy returning officer and the stubs of any ballots issued shall be included in the envelope with the unissued ballots.

Candidates and scrutineers may sign envelope

(2) Any candidates or scrutineers present may write their signatures across the flap of any envelope containing ballots and may also affix their seals.

STATEMENT OF THE POLL

Statement to be made by D.R.O.

59.—(1) The deputy returning officer shall complete a prescribed statement of the poll, accounting for all the ballots supplied to him by the returning officer, and the statement shall be signed by the deputy returning officer and poll clerk and may be signed by any candidate or scrutineer present.

Disposition of statements

(2) The deputy returning officer shall ensure that,

(a) one part of the statement is enclosed in a special envelope supplied for the purpose of the official tabulation;

(b) one part is placed in or attached to the poll record; and

(c) one part is retained by him.

CERTIFICATE OF COUNT

Certificate of result of poll

60. The deputy returning officer shall complete a prescribed certificate of the number of ballots cast for each candidate and of the number of rejected and unmarked ballots and shall provide a copy of the certificate for each candidate to the scrutineer present and in the case where no candidate or scrutineer is present the certificates shall be forwarded to the returning officer in the poll return envelope.

FINAL POLL PROCEDURE

Polling list, etc., to be placed in poll return envelope

61. The deputy returning officer and the poll clerk shall ensure that the poll record, polling list, ballot envelopes and all other documents collected or used at the polling place are placed in the poll return envelope and shall each take the prescribed oath that their duties have been completed.

Delivery of poll return envelope to R.O.

62.—(1) The deputy returning officer shall then personally deliver the sealed poll return envelope along with the sealed official tabulation envelope to the returning officer or both envelopes shall be delivered by the poll clerk or by some other person chosen as special messenger by the returning officer or the deputy returning officer who shall write on the envelopes the name of the person to whom they were entrusted and shall take a receipt therefor.

Candidate or scrutineer may affix seal

(2) Any candidate or scrutineer present may affix his seal or write his signature across the flap of the sealed poll return envelope or the sealed official tabulation envelope.

Registered mail

(3) In lieu of proceedings under subsection (1), the deputy returning officer, with the approval of the returning officer, may seal the official tabulation envelope inside of the poll return envelope and forward it by registered mail to the returning officer.

Delivery to be forthwith

(4) The poll clerk or other person authorized to personally deliver the envelopes to the returning officer shall do so forthwith and shall take before him the prescribed oath and any candidate or scrutineer is entitled to be present when the envelopes are so delivered to the returning officer.

RECEIPT OF POLL RETURN ENVELOPE BY RETURNING OFFICER

R.O. to seal poll return envelope

63. Immediately on the receipt of a poll return envelope, without effacing or covering any seals already affixed to it, the returning officer shall affix a seal prescribed by the Chief Election Officer in such a way that the envelope cannot be opened without the seal being broken and shall take every precaution

for its safekeeping and for preventing any person other than himself and the election clerk from having access to it.

OFFICIAL TABULATION

Conduct of official tabulation by R.O.

64.—(1) The returning officer, at the place, day and hour stated in his notice of poll shall, in the presence of the election clerk and any candidate or candidate's delegate or scrutineer present, conduct the official tabulation by adding up the votes given for each candidate as taken from the official statements of the poll contained in the special envelopes returned to him or from such other sources as may be available to him but without opening any of the sealed envelopes containing ballots.

Adjournment of official tabulation

(2) The returning officer may adjourn the official tabulation proceedings to a future day and hour and so on from time to time but not in the aggregate to exceed fourteen days,

(a) if any of the poll return envelopes or official tabulation envelopes have not been returned by the day fixed for the official tabulation;

(b) if any deputy returning officer has not enclosed in the envelopes referred to in clause (a) the official statement of the ballots counted by him as required by this Act; or

(c) if for any cause the returning officer cannot ascertain the number of votes given for each candidate.

Procedure when poll envelopes lost, statements not available, etc.

65. If, on the fifteenth day after the day fixed for the official tabulation,

(a) any of the poll return envelopes are known to be lost or destroyed or for any reason have not been received; or

(b) any statements or certificates of the ballot count at any polling places are not available and copies of them cannot be procured,

the returning officer shall ascertain, by such evidence or documents verified by declaration as he is able to obtain, the total number of votes given for each candidate at the several polling places and may summon any poll official, scrutineer or other person to appear before him, at a time and place to be named by him, with all necessary papers and documents and the returning officer shall notify the candidates of the intended pro-

ceedings and may examine any person so summoned respecting the matter in question.

Declaration of result

66.—(1) At the close of the official tabulation, or hearings in the case of missing envelopes or statements, the returning officer shall forthwith declare to be elected the candidate having the largest number of votes.

Casting vote

(2) If an equal number of votes is found to have been cast for two or more candidates and an additional vote would entitle one of them to be declared to be elected, the returning officer shall give the casting vote.

EFFECT OF IRREGULARITIES

Irregularities not affecting result

67. No election shall be declared invalid,

(a) by reason of any irregularity on the part of the returning officer or in any of the proceedings preliminary to the poll;

(b) by reason of a failure to hold a poll at any place appointed for holding a poll;

(c) by reason of non-compliance with the provisions of this Act as to the taking of the poll, as to the counting of the ballots or as to limitations of time; or

(d) by reason of any mistake in the use of the prescribed forms,

if it appears to the tribunal having cognizance of the matter that the election was conducted in accordance with the principles of this Act and that the irregularity, failure, non-compliance or mistake did not affect the outcome of the election.

RECOUNT

Notice

68. Notice in writing of an application to be made under subsection 70 (1) shall be given forthwith by the applicant personally or sent by registered mail to the Chief Election Officer, the returning officer and election clerk, and each candidate in the electoral district.

Interpretation

69.—(1) In this section and in sections 70 to 80, unless otherwise stated, "judge" means the judge of the county court of the county or of the district court of the provisional judicial district in which the electoral district or any part of it is situate and, where there are two or more judges, the senior judge or, in the case of illness or absence of the senior judge or where

the senior judge requests him to act, another judge of the court.

What judge to hold recount when district in two or more counties

(2) Where the electoral district comprises parts of two or more counties or provisional judicial districts any application shall be to and the recount shall take place before the judge of the court of the county or provisional judicial district having the larger or largest population according to the last federal census.

Where recount may be had

70.—(1) For the purpose of determining the candidate who obtained the highest number of votes and within the four days, Sunday being excluded, following the official tabulation made by the returning officer, a judge may appoint a time and place to recount the votes cast at the election in the electoral district upon the application of a candidate or elector if it is made to appear by affidavit that,

(a) a deputy returning officer has improperly counted any ballot or improperly rejected any ballot or made an incorrect statement of the number of ballots cast for any candidate; or

(b) the returning officer has improperly tabulated the votes.

Security for costs

(2) An application under subsection (1) shall be accompanied by a receipt showing that there has been deposited with the clerk of the county or district court, as security for costs in connection with the recount, the sum of $200 or money order or cheque in that amount drawn upon and accepted by a chartered bank or trust company doing business in Ontario.

Notice

71. Where an application for a recount is refused by the judge, notice of such refusal shall be given forthwith by the clerk of the court to those persons mentioned in section 68.

Notice of time and place of recount

72.—(1) At least two days notice in writing of the time and place appointed for the recount by the judge shall be given forthwith by the clerk of the court to those persons mentioned in section 68 in such manner as the judge directs.

Presence of clerk of court

(2) The judge may require the clerk of the county or district court to be present at the time and place appointed.

Who to be present at recount

(3) The returning officer and the election clerk shall be present at the recount and each candidate is entitled to be present and to be represented by counsel and to have present and be represented by such scrutineers as are permitted by the judge, and except by such permission no other person shall be present.

Documents to be produced at recount

(4) The returning officer and the election clerk shall attend at the recount with all the poll return envelopes received from the deputy returning officers and the original statements of the poll which shall continue in the custody of the returning officer and he is responsible for them subject to any direction given by the judge.

Procedure by judge

(5) At the time and place appointed, the judge shall proceed to make the recount from the original statements of the poll or have opened the sealed envelopes containing,

(a) the ballots that have been counted for each candidate;

(b) the ballots rejected as to marking; and

(c) the ballots unmarked by any voters,

and may have opened the sealed envelopes containing,

(d) the cancelled ballots;

(e) the declined ballots; and

(f) the unissued ballots.

Rules to govern judge at recount

73. The judge shall conduct the recount of the ballots according to the rules of the count at the close of the poll by the deputy returning officer, and shall verify or correct the statements of the poll.

Distinguishing disputed ballots

74.—(1) If any person requests him to do so, the judge shall write the poll number on the back of and initial any disputed ballots and seal them in a separate envelope.

Sealing up ballots at close of recount

(2) Upon the completion of the recount, except as provided by subsection (1), the judge shall have sealed up all the ballots in their original envelopes and all the original statements in a separate envelope clearly marked as to its contents.

Review of decision of R.O. when documents missing

75.—(1) Where a poll return envelope used at a polling place was not available to the returning officer when he made his decision in respect of the number of votes given for a candidate or where the proper statement was not found in the official tabulation envelope, the judge shall, if necessary or required, review the decision of the returning officer.

Powers of judge

(2) For the purpose of arriving at the facts, the judge has all the powers of the returning officer with regard to the atten-

dance and examination of witnesses or he may act upon the evidence taken by the returning officer.

When judge to certify result of recount

76.—(1) The judge shall certify in writing to the returning officer the result of the recount unless, during the two days following completion of his recount, Sunday being excluded, the judge receives a notice of appeal as provided in section 79.

Declaration of result

(2) Upon receipt of the judge's certificate, the returning officer shall then declare the candidate having the largest number of votes to be elected but in the case of an equality of votes, the returning officer shall give the casting vote.

Costs

77.—(1) The costs of the recount, including the costs of the returning officer and the election clerk, are in the discretion of the judge who may, subject to subsection (3), order by whom, to whom, and in what manner they shall be paid.

Taxing and allowing costs

(2) The judge shall tax the costs and shall, as nearly as may be, follow the tariff of costs in respect of proceedings in the Supreme Court.

Where judge makes no provision re costs

(3) Where the judge makes no provision as to costs, the costs of the returning officer and election clerk shall be paid by the Province of Ontario at the prescribed rates.

Deposits, disposal of

78. Where costs are directed to be paid by the applicant, the moneys deposited as security for costs shall be paid out to the party entitled thereto, so far as necessary, and, if the deposit is insufficient, execution may issue out of the court of the county or judicial district upon the judge's order for the balance.

APPEAL FROM DECISION ON RECOUNT

Appeal from decision of judge

79.—(1) Any party may appeal from the decision of the judge who conducted the recount by giving notice in writing within two days after the completion of the recount to the other parties concerned and to the judge of his intention to appeal, and he may by the notice limit the appeal to specified ballots.

Service of notice of appeal

(2) The notice may be served upon the other parties personally, or upon the solicitor who acted for him upon the recount by the judge, personally or at his office, or as a judge of the Supreme Court may direct.

Ballots, etc., to be forwarded to Registrar of Supreme Court

(3) Where the appeal is limited, the judge who conducted the recount shall forward, in the envelope as provided for in subsection 74 (1), the ballots that are the subject of appeal

together with the notice and a certificate showing his findings as to the ballots in dispute, by registered mail to the Registrar of the Supreme Court, but, if the appeal is not limited, the judge shall forward all the ballots and other papers to the Registrar, and in either case he shall await the result of the appeal before sending his certificate to the returning officer.

Allowing copy of certificate of judge

(4) The judge who conducted the recount shall, upon request, allow each party to make a copy of the certificate of his findings before it is forwarded to the Registrar.

Appointment for hearing of appeal

(5) On receipt of the ballots and notice, the Registrar shall forthwith obtain an appointment from a judge of the Supreme Court for hearing the appeal and shall notify the parties or their solicitors of the time so appointed.

Procedure on hearing of appeal, certificate of result

(6) At the time appointed, the judge of the Supreme Court shall recount the ballots or such of them as are the subject of appeal, and shall forthwith certify his decision to the judge who conducted the recount, whose duty it is to conform to the decision and to certify the result without delay to the returning officer.

Costs of appeal

(7) The judge of the Supreme Court may direct by whom and to whom the cost of the appeal, including the costs of the returning officer and the election clerk, shall be paid.

Taxing and allowing costs

(8) The judge of the Supreme Court shall tax the costs of the appeal.

Idem

(9) Where the judge of the Supreme Court makes no provision as to costs, the costs of the returning officer and election clerk shall be paid by the Province of Ontario at the prescribed rates.

ELECTION RETURN

When return to be made

80.—(1) If a candidate has been declared elected by the returning officer as provided by section 28 or 30, or if the returning officer has received from a judge the certificate of the result of a recount or if by the seventh day following the completion of the official tabulation the returning officer,

(a) has not received notice to attend before a judge for a recount; or

(b) has received notice from a judge that a recount has been refused,

the returning officer shall send by registered mail, the writ with his dated and signed return to the Chief Election Officer that a candidate has been elected by acclamation or that the candidate having the largest number of votes has been duly elected and shall forward a copy of his return to each candidate.

Report by R.O.

(2) The returning officer shall include with his return to the Chief Election Officer a report of the proceedings at the official tabulation making any observations he thinks proper as to the state of the poll return envelopes or the want of any statement of the ballots counted and the mode by which he ascertained the votes given for each candidate under section 65, if applicable.

Declaration by R.O.

(3) The returning officer shall forthwith make the prescribed affidavit after sending his return, and it shall be sent forthwith to the Chief Election Officer.

Application to compel R.O. to add up votes, make return, etc.

81.—(1) If a returning officer wilfully delays, neglects or refuses,

(a) to add up the votes;

(b) to declare to be elected the candidate having the largest number of votes;

(c) to give his casting vote where he is by law required to do so; or

(d) to make the return, as required by this Act, of the candidate having the largest number of votes,

R.S.O. 1980, c. 224

and the person aggrieved or the Chief Election Officer or any elector applies under the *Judicial Review Procedure Act* for an order commanding the returning officer to perform the duty that is shown to have been not performed, the notice of motion shall be served upon the returning officer and upon the persons who were candidates at the election.

Application of R.S.O. 1980, c. 223

(2) In other respects the *Judicature Act* and the rules of court made thereunder apply to such application.

Other rights and remedies

(3) Nothing in this section affects or impairs any other right or remedy of the person aggrieved or of the Chief Election Officer.

Notice of return in *Ontario Gazette*

82. The Chief Election Officer, on receiving the return of a member elected to the Assembly, shall give notice of the receipt of the return in the next ordinary issue of *The Ontario*

Gazette, the date of such receipt and the name of the candidate elected.

DISPOSITION OF ELECTION DOCUMENTS AND MATERIAL

Shipment to C.E.O. of election documents

83.—(1) Forthwith after making his return, the returning officer shall arrange for shipment in the prescribed manner to the Chief Election Officer of all envelopes returned to him by the deputy returning officers, and all documents, papers, and materials in his possession relating to the conduct of the election but excluding those related to enumeration which shall be destroyed.

Endorsement thereon

(2) The returning officer shall transmit all election material to the Chief Election Officer in boxes or packages marked "Used" or "Unused" and secured and sealed with the prescribed seals and the returning officer shall endorse on each box or package of used material a description of the contents, the date of the election and the name of the electoral district to which they relate.

How long to be retained

84.—(1) The Chief Election Officer shall retain in his possession the used documents transmitted to him by the returning officer under section 83 for at least one year, and if the election is contested, then for one year after the termination of the contestation.

When documents not to be destroyed

(2) If notice is served on the Chief Election Officer under subsection 98 (6) or if an order is made directing that documents relating to an election are not to be destroyed, he shall affix to the outside of the box or covering containing such documents a label having thereon in large and distinct letters the words "NOT TO BE DESTROYED".

Inspection of documents

85.—(1) All documents forwarded by a returning officer in pursuance of this Act to the Chief Election Officer, other than ballots, shall be open to public inspection at such time and under such conditions and rules as are made by him, and he shall supply copies of or extracts from the documents to any person demanding them on payment of the prescribed fee, and in computing the number of words a figure shall be counted as a word.

Inspection of ballots only under order of judge

(2) No person shall be allowed to inspect any ballot in the custody of the Chief Election Officer except under an order of a judge of the Supreme Court.

When order to be granted

(3) The order may be made on the judge being satisfied by affidavit or other evidence on oath that the inspection or production of the ballot is required for the purpose of instituting or

maintaining a prosecution for an offence in relation to ballots or for the purpose of an action questioning an election or return.

Conditions of order

(4) The order may be made subject to such conditions as the judge thinks proper.

Where inspection takes place

(5) Subject to the order, the inspection shall take place under the immediate supervision of the Registrar of the Supreme Court, and he shall be present during the inspection, and, so long as the ballots are in the custody of the Registrar and not under inspection, they shall be kept in a secure place under lock and key.

Evidence as to documents, etc., in certain cases

86. Where an order is made by a judge of the Supreme Court for the production by the Chief Election Officer of any document in his possession relating to an election, the production of it by him, in such manner as is directed by the order, is evidence that the document relates to the election, and any endorsement appearing on any envelope containing ballots so produced is evidence that the contents are what they are stated to be by the endorsement.

Inspection of documents under order of committee of Assembly

87. Notwithstanding the provisions of this or any other Act, all documents, including used and unused ballots, relating to an election in the custody of the Chief Election Officer or of any other person may be opened, inspected and examined under such conditions and rules as are made by a committee of the Assembly for the purpose of inquiring into any matter referred to the committee by order of the Assembly, and, upon any such proceeding before the committee, any such document may be filed as an exhibit, and any person summoned to attend and give evidence before the committee upon such inquiry may be examined or cross-examined in relation thereto.

Report re conduct of election

88. The Chief Election Officer, in addition to any other requirements of this Act in respect of the tabling of the results of an election, shall report to the Assembly through the Speaker whether or not in his opinion the conduct of the election was free or otherwise of any of the actions which are declared to be offences or corrupt practices under this Act.

CORRUPT PRACTICES AND OTHER OFFENCES: PENALTIES AND ENFORCEMENT

Voting when not qualified, etc.

89. Every person who, at an election,

(a) not being qualified to vote, votes; or

(b) being qualified to vote, votes more than once; or

(c) votes in an electoral district or polling division other than the one in which he is entitled to vote by this Act,

is guilty of a corrupt practice and is liable to a fine of not more than $5,000 or to imprisonment for a term of not more than six months, or to both.

Improper voting by proxy, etc.

90. Every person who,

(a) appoints a proxy for reward or remuneration;

(b) induces or procures any elector by undue influence to appoint a voting proxy to vote at an election;

(c) unduly solicits or attempts to solicit from an elector an appointment as a voting proxy to vote at an election;

(d) having appointed a voting proxy to vote at an election, attempts to vote at the election otherwise than by means of such voting proxy while the voting proxy is in force;

(e) knowingly appoints more than one person as a voting proxy; or

(f) having been appointed a voting proxy at an election, votes or attempts to vote at the election under the authority of the proxy when he knows or had reasonable grounds for supposing that his appointment has been cancelled or that the elector who made the appointment is no longer entitled to vote or is dead,

is guilty of a corrupt practice and is liable to a fine of not more than $5,000 or to imprisonment for a term of not more than six months, or to both.

Wilful miscount of ballots

91. Every deputy returning officer or poll clerk who wilfully miscounts the ballots or otherwise wilfully makes up a false statement of the poll is guilty of a corrupt practice and is liable to a fine of not more than $5,000 or to imprisonment for a term of not more than six months, or to both.

Neglect of duties

92. Every returning officer, election clerk, revision assistant, deputy returning officer or poll clerk who refuses or neglects to perform any of the duties imposed upon him by this

Act is guilty of an offence and on conviction is liable to a fine of not more than $5,000.

Offences relating to ballot papers

93. Every person who,

(a) without authority, supplies a ballot to any person;

(b) without authority, places in a ballot box anything other than an official ballot;

(c) delivers to the deputy returning officer to be placed in the ballot box any other paper than the ballot given to him by the deputy returning officer;

(d) takes a ballot out of the polling place;

(e) without authority, is found to be in possession of, takes, opens or otherwise interferes with, a ballot box, a ballot or books or packet of ballots provided for use at, in use, or used for the purpose of an election;

(f) being a deputy returning officer, knowingly puts his initials on the back of any paper purporting to be or capable of being used as a ballot at an election;

(g) being authorized by the returning officer or Chief Election Officer to print the ballots for an election, prints more than he is authorized to print; or

(h) attempts to commit any offence mentioned in this section,

is guilty of a corrupt practice and is liable to a fine of not more than $5,000 or to imprisonment for a term of not more than six months, or to both.

False information to authorized persons

94. Every person who knowingly furnishes false or misleading information to a returning officer or to any person who by this Act is authorized to act as an election official is guilty of an offence and on conviction is liable to a fine of not more than $5,000 or to imprisonment for a term of not more than six months, or to both.

Inducing unqualified person to vote, etc.

95. Every person who,

(a) induces or procures any person to vote knowing that that person has no right to vote; or

(b) before or during an election knowingly publishes a false statement of the withdrawal of a candidate,

is guilty of a corrupt practice and is liable to a fine of not more than $5,000 or to imprisonment for a term of not more than six months, or to both.

General offence

96. Every person who contravenes any of the provisions of this Act, for which contravention no penalty is otherwise provided, is guilty of an offence and on conviction is liable to a fine of not more than $5,000.

Disqualification of persons guilty of corrupt practice

97.—(1) Where a candidate at an election is convicted of committing a corrupt practice, the candidate is ineligible to stand as a candidate at any election up to and including the next general election, or to hold any office at the nomination of the Crown or the Lieutenant Governor in Council for five years following the date of the official return.

Limitation

(2) If, when the candidate is convicted of committing a corrupt practice, the presiding judge finds that the act constituting in law a corrupt practice was committed without any corrupt intent, the candidate is not subject to the penalties and disabilities provided by subsection (1).

CONTESTED ELECTIONS

Validity of election, determination by action

98.—(1) The validity of the election in any electoral district or of the election of any person to the Assembly or of the right of any person to sit in the Assembly or whether or not any person is guilty of a corrupt practice shall be tried and determined by an action commenced by issuing a writ in the Supreme Court.

Penalties for corrupt practice

(2) Where the Supreme Court determines that a person has committed a corrupt practice it may, in addition to any other penalty or order, impose the penalties provided therefor under sections 89 to 97.

Who may commence action

(3) A candidate at an election or any elector qualified to vote at an election or the Chief Election Officer, if he considers that it is in the public interest that an action be commenced, may commence an action.

Time for commencing action

(4) No action shall be commenced after the expiration of ninety days following the date of the official election return, but this subsection does not apply to the Chief Election Officer who may commence an action under this section at any time.

Local registrar to notify Registrar

(5) Upon receipt of a writ of summons, the local registrar of the Supreme Court shall send notice thereof by registered mail to the Registrar of the Supreme Court.

Registrar to notify C.E.O.

(6) The Registrar shall send a notice by registered mail to the Chief Election Officer of every writ of summons issued under this section by anyone other than the Chief Election Officer.

C.E.O. to notify Assembly and returning officer

(7) The Chief Election Officer shall notify the Assembly, through the Clerk of the Assembly, of any action commenced under the authority of this section, and shall also notify the returning officer of the electoral district to which the writ of summons relates.

Publication of notice by returning officer

(8) The returning officer, after receipt of a notification under subsection (7), shall forthwith publish a notice thereof in the prescribed form once in a newspaper having general circulation in the electoral district.

Practice and procedure

99.—(1) Where not otherwise provided in this Act and subject to the rules of court, the practice and procedure of the Supreme Court apply to an action commenced under section 98.

Judge without jury

(2) The action shall be tried by a judge without a jury.

Intervention in action by C.E.O.

100.—(1) The Chief Election Officer, following receipt of the notice under subsection 98 (6), may apply to a judge of the Supreme Court, or to the judge presiding at the trial for leave to intervene in the action for the purpose of bringing any evidence before the court or for any other valid reason.

Notice of application to be filed and served

(2) Where the Chief Election Officer applies prior to the trial for leave to intervene, he shall file notice of the application in the office in which the action was commenced and shall serve copies thereof on all parties.

Where leave granted

(3) If the judge grants leave to intervene, he shall give directions as to appearance and procedure in respect of the Chief Election Officer including leave to subpoena witnesses to attend at the trial, and thereafter, the Chief Election Officer shall be served with all proceedings in the action.

Security for costs

101.—(1) At the time of the commencement of an action, security shall be given on behalf of the plaintiff, other than the Chief Election Officer, to be applied towards payment of all costs, charges and expenses, if any, that may become payable by the plaintiff, including the costs and charges of the election officer incurred in the publication of notices in the electoral

district in respect of the writ of the action or proceedings therein.

Idem

(2) The security shall be in the amount of $2,000 and shall be given in accordance with the practice in cases where a plaintiff resides out of Ontario.

Disclaimer not to affect action R.S.O. 1980, c. 235

102. A disclaimer by an elected member under the *Legislative Assembly Act* does not affect the right of any person entitled to commence an action under section 98 and an action may be commenced in the same manner as if the member elected had not disclaimed.

Abatement of action

103.—(1) An action abates on the death of a sole plaintiff or the survivor of several plaintiffs.

Liability for costs

(2) The abatement of an action does not affect any liability for costs previously incurred.

Substitution of plaintiff

(3) On the abatement of an action, notice of the abatement shall be given by the Registrar of the Supreme Court in the prescribed form in the electoral district and any person who might have been a plaintiff may apply to a judge of the Supreme Court or, during the trial, to the trial judge to be substituted as the sole plaintiff.

Substitution for unqualified plaintiff

104. Where a plaintiff is not qualified to be a plaintiff in an action under section 98, the action shall not on that account be dismissed if within such time as a judge of the Supreme Court or, during the trial, the trial judge allows for that purpose, another plaintiff is substituted and substitution shall be made on such terms and conditions as the judge considers proper.

Death of defendant, etc., at or before trial

105.—(1) If, before or during the trial,

(a) the defendant dies; or

(b) the Assembly resolves that the seat is vacant; or

(c) the defendant gives notice to the court that he does not intend to oppose, or further oppose the action,

notice of such event shall be given by the Registrar of the Supreme Court in the prescribed form in the electoral district.

Substituted as further defendant

(2) Within twenty days after notice is given in the electoral district under subsection (1), any person who might have been a plaintiff may apply to a judge of the Supreme Court or, during the trial, to the trial judge to be admitted as a defendant to

oppose the action, or so much thereof as remains undisposed of, and may be admitted accordingly, either with the defendant, if there is a defendant, or in place of the defendant, and any number of persons not exceeding three, may be so admitted.

Adjournment of trial

(3) If any of the events mentioned in subsection (1) happen during the trial, the court shall adjourn the trial in order that notice may be given in the electoral district.

Where notice of intention not to oppose given

(4) The defendant who has given the notice under clause (1) (c) shall not be allowed to appear or act as a party against the action in any proceeding thereon and shall not sit or vote in the Assembly until the Assembly has been informed of the judgment in the action, and the court shall report the giving of the notice to the Assembly through the Clerk of the Assembly.

Declaration that election void

106.—(1) Where it is determined that the successful candidate is guilty of a corrupt practice, the court may declare his election void.

Unseating and seating of another candidate

(2) Where the election of any person is declared void, the court may order that he be removed from office and, if it is determined that any other person was elected, that he be admitted to take his seat in the Assembly or, if it is determined that no other person is elected, the court may provide for the holding of a new election.

Where result of election affected

(3) Where it is determined that any person is guilty of a corrupt practice and that the commission of the corrupt practice affected the result of the election, the court may declare the election void and provide for holding a new election.

Unseating of disqualified person

(4) Where it is determined that a person elected has become disqualified or has forfeited his seat, the court may order that he be removed from office and provide for the holding of a new election.

Where act or omission affects result of election

(5) Where it is determined that any act or omission of an election official affected the result of an election, the court may declare the election void and provide for holding a new election.

Compensation of candidate where election void

(6) Where a new election is ordered, the court may make such order as it considers just, against any person who is found guilty of an offence or a corrupt practice under this Act, for the compensation of candidates at the void election, not exceeding $15,000 per candidate.

(7) The Registrar of the Supreme Court shall forward the judgment and the reasons for judgment to the Assembly through the Clerk of the Assembly. Judgment to Legislative Assembly

107.—(1) If the court determines that a member was not duly returned, notwithstanding that an appeal from the decision is pending, he is not entitled to sit or vote in the Assembly until the appeal is disposed of and the judgment of the court is received by the Assembly, but where the court determines that some other person was elected or is entitled to the seat, such person is, notwithstanding that an appeal is pending, entitled to take his seat in the Assembly and to sit and vote until the appeal is disposed of and the judgment of the court is received by the Assembly. Where election set aside and appeal entered

(2) In the cases to which subsection (1) applies, where an appeal is entered, the Registrar shall forthwith notify the Clerk of the Assembly that an appeal is pending from the decision of the court. Notice of appeal to Clerk

108. A writ for a new election shall not be issued until after the expiration of the time limited for appeal from the determination of the Supreme Court that the election is void and, if an appeal is brought, the writ shall not issue pending the appeal. Time for issue of writ for new election

109.—(1) An appeal lies from the judgment of the Supreme Court to the Court of Appeal. Appeals to Court of Appeal

(2) The Registrar shall set the appeal down for hearing at the next sittings, and the party appealing shall, within ten days, give to the parties affected by the appeal, or the solicitors by whom such parties were represented before the trial judge, and to the Chief Election Officer, notice in writing that the case has been so set down, and the appeal shall be heard by the Court of Appeal as speedily as practicable. Setting down for hearing, etc.

(3) The Court of Appeal may give any judgment that ought to have been pronounced or may grant a new trial for the purposes of taking evidence or additional evidence and may remit the case to the trial judge or to another judge and, subject to any directions of the Court of Appeal, the case shall thereafter be proceeded with as if there had been no appeal. Judgment or new trial

(4) An appeal lies from the decision of the trial judge to whom the case was remitted by the Court of Appeal in accordance with the provisions of this section. Appeal from decision on new trial

110. The Lieutenant Governor in Council, upon the recommendation of the Assembly, may issue a commission to Inquiry as to extensive corrupt practices

inquire into whether corrupt practices extensively prevailed at the election and the commission has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the inquiry as if it were an inquiry under that Act.

R.S.O. 1980, c. 411

ELECTION FEES AND EXPENSES

Regulations

111. The Lieutenant Governor in Council may make regulations,

(a) prescribing the fees and expenses to be allowed to the officers and other persons, except those in the office of the Chief Election Officer, for their services and disbursements under this Act; and

(b) prescribing the costs that shall be paid by the Province of Ontario under sections 77 and 79.

Payment of expenses of Act

112.—(1) The fees and expenses to be allowed to the election officers, returning officers and persons for services performed under this Act, so far as they are payable by the Province of Ontario, are payable out of the Consolidated Revenue Fund.

Premises and equipment

(2) The Chief Election Officer may lease such premises and acquire such equipment and supplies as are necessary to properly carry out his responsibilities under this Act.

Clerical and technical assistance

(3) The Chief Election Officer from time to time may appoint such persons having technical or special knowledge of any kind to assist the Chief Election Officer for a limited period of time, or in respect of a particular matter.

Accountable warrants

(4) For the purpose of providing the funds required under this section, the Lieutenant Governor in Council may direct that accountable warrants payable out of the Consolidated Revenue Fund be issued from time to time in favour of any officer or other person.

Accounts and audit

(5) The sums paid out of this section shall be duly accounted for by the production of accounts and vouchers but it is not necessary that such accounts or vouchers be furnished by any person in whose favour an accountable warrant was issued before the issue of a further accountable warrant to the same person, unless the Lieutenant Governor in Council otherwise directs.

Audit by Provincial Auditor

(6) All accounts respecting such fees and expenses shall be audited by the Provincial Auditor.

OFFICE OF THE CHIEF ELECTION OFFICER

Staff

113.—(1) Subject to the approval of the Board, the Chief Election Officer may employ such persons on his permanent staff as are necessary in the performance of his duties and for the efficient and proper operation of his office and may, for such employees, establish job classifications, and may determine the salary of the Assistant Chief Election Officer and the salaries and remuneration, which shall be comparable to the salary ranges of similar positions or classifications in the public service of Ontario, and the terms and conditions of employment of the employees on the permanent staff of his office and the Chief Election Officer shall present annually to the Board estimates of the sums of money that will be required for these purposes.

Review of estimates by Board

(2) The Board shall review and may alter as it considers proper the estimates referred to in subsection (1), and the chairman of the Board shall cause the estimates as altered by the Board to be laid before the Assembly and the Assembly shall refer the estimates laid before it to a committee of the Assembly for review.

Moneys

(3) The moneys required for the purposes of this Act, other than under sections 4 and 112, shall be paid out of the moneys appropriated therefor by the Legislature.

Oath of office and secrecy and oath of allegiance

114.—(1) Every employee of the office of the Chief Election Officer, before performing any duty as such, shall take and subscribe the prescribed oath of office and secrecy and, if required by the Chief Election Officer, the prescribed oath of allegiance.

Idem

(2) The Chief Election Officer may require any person appointed to assist the Chief Election Officer for a limited period of time or in respect of a particular matter to take and subscribe either or both of the oaths referred to in subsection (1).

Record of oaths

(3) A copy of each oath administered to an employee of the office of the Chief Election Officer under subsection (1) shall be kept in the file of the employee in the office of the Chief Election Officer.

Cause for dismissal

(4) The failure of an employee of the office of the Chief Election Officer to take and subscribe or to adhere to either of the oaths required by subsection (1) may be considered as cause for dismissal.

Benefits
R.S.O. 1980, c. 418

115.—(1) The employee benefits applicable from time to time under the *Public Service Act* to civil servants who are not within a unit of employees established for collective bargaining under any Act apply or continue to apply, as the case may be, to the Chief Election Officer, the Assistant Chief Election Officer, and to the full-time permanent and probationary employees of the office of the Chief Election Officer and the Board or any person authorized by order of the Board may exercise the powers and duties of the Civil Service Commission and the Chief Election Officer or any person authorized in writing by the Chief Election Officer may exercise the powers and duties of a deputy minister under that Act in respect of such benefits.

Superannuation benefits
R.S.O. 1980, c. 419

(2) The *Public Service Superannuation Act* applies to the full-time permanent and probationary employees of the office of the Chief Election Officer as though the office of the Chief Election Officer were a commission designated by the Lieutenant Governor in Council under section 28 of that Act and to the Chief Election Officer and Assistant Chief Election Officer as though they were members of such a commission who held positions designated by and whose requests for such designations had been approved by the Lieutenant Governor in Council under section 28 of that Act and all credits in the Public Service Superannuation Fund of the full-time permanent and probationary employees of the office of the Chief Election Officer and of the Chief Election Officer and the Assistant Chief Election Officer accumulated under that Act immediately before this Act comes into force are preserved and continued in accordance with that Act.

Conduct and discipline

116.—(1) The Chief Election Officer may make orders and rules for the conduct of the internal business of the office of the Chief Election Officer and, after a hearing, may suspend, demote or dismiss any employee of the office for cause.

Hearing

(2) The provisions of the *Public Service Act* and the regulations thereunder that apply in relation to suspension from employment pending an investigation and in relation to a hearing by a deputy minister or his delegate as to cause for dismissal, other than as to notice to the Civil Service Commission, apply with necessary modifications where the Chief Election Officer is of the opinion that there may exist cause for the suspension without pay, demotion or dismissal of an employee of the Office, and, for the purpose, the Chief Election Officer shall be deemed to be a deputy minister.

Appeals

(3) A decision of the Chief Election Officer to demote, suspend or dismiss an employee may be appealed by the employee, within fourteen days after the decision has been communi-

cated to him, to the Public Service Grievance Board established under the *Public Service Act*. R.S.O. 1980, c. 418

(4) The Public Service Grievance Board may hear and dispose of an appeal under this section and the provisions of the regulation under the *Public Service Act* that apply in relation to a grievance for dismissal apply with necessary modifications to an appeal under this section, and, for the purpose, the Chief Election Officer shall be deemed to be a deputy minister and the decision of the Public Service Grievance Board is final and the Public Service Grievance Board shall report its decision and reasons in writing to the Chief Election Officer and to the appellant. Board authorized to hear appeals

MISCELLANEOUS

117. Section 6 of the *Legislative Assembly Act*, being chapter 235 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor: R.S.O. 1980, c. 235, s. 6, re-enacted

6. The persons qualified to sit and vote as members of the Assembly are any persons of the full age of eighteen years who are Canadian citizens resident in Ontario and not disqualified by this or any other Act from election to the Assembly. Qualification of members

118. The *Election Act*, being chapter 133 of the Revised Statutes of Ontario, 1980, is repealed. Repeal

119.—(1) This Act, except section 117, comes into force on the day it receives Royal Assent. Commencement

(2) Section 117 comes into force and has effect on the day after the day upon which the Legislature in existence on the 1st day of July, 1986 is dissolved or ended by the effluxion of time. Idem

120. The short title of this Act is the *Election Act, 1983*. Short title

Gov. Publ.

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

Bill 154

LIBRARY APR 23

An Act to amend the Game and Fish Act

Mr. Philip

1st Reading December 13th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

SECTION 1. The definitions of "body-gripping trap" and "leg-hold trap" are reworded to differentiate more clearly among the types of traps. A "body-gripping trap" does not include a "leg-hold trap" and neither type of trap includes a snare.

The definition of "trap" is expanded to include a pitfall.

SECTION 2. Subsection 2 (3) is amended to refer to proposed section 30a.

SECTION 3. Section 30 now reads as follows:

30.—(1) In this section, "animal" includes any domestic, fur-bearing or game animal.

(2) No person shall trap or attempt to trap any animal by means of a body-gripping trap or leg-hold trap.

(3) Subsection (2) does not apply,

(a) to a person who holds a licence to hunt or trap fur-bearing animals;

(b) to a farmer who uses a body-gripping trap or leg-hold trap on his own lands in defence or preservation of his property or in circumstances referred to in subsection 62 (7);

(c) to a person who uses a body-gripping trap or leg-hold trap designated by the Minister as a humane trap.

(4) The Minister may, with the approval of the Lieutenant Governor in Council, make an order designating areas or municipalities in Ontario in which the prohibition set out in subsection (2) does not apply.

(5) The Minister may, with the approval of the Lieutenant Governor in Council, make an order designating any body-gripping trap or leg-hold trap as a humane trap for the purpose of clause (3) (c).

The new section would prohibit the use of all traps (including body-gripping traps, leg-hold traps and snares), except designated unrestricted humane traps and specified traps permitted for use by farmers and trappers.

Subsections 30 (3) and (4). Farmers and trappers are permitted to use leg-hold traps and snares, but only under water. They are permitted to use padded leg-hold traps on land, but only for trapping wolf and fox, traps designated for use for wolf and fox, designated restricted humane traps (the quick-killing traps, including snares, intended for use only by experienced users, that the industry currently refers to as "humane traps") and designated humane body-gripping traps.

Subsection 30 (5). Anyone may use a designated unrestricted humane trap (intended for use by inexperienced users without endangering children or pets).

Subsection 30 (6). The Minister is empowered to designate various types of traps, but is no longer empowered to exempt areas or municipalities from the prohibition in subsection 30 (2) (see existing subsection 30 (4) of the Act).

SECTION 4 . *Subsection 30a (1).* A person who sets a live-holding trap (a category which may include designated unrestricted humane traps) must inspect it daily (in the parts of Ontario south of the C.N.R. line) or once every three days (in the parts of Ontario north of that line).

Subsection 30a (2). A mechanically unfit trap may cause unnecessary pain and suffering to the captured animal.

Subsections 30a (3) to (6). The possession and sale of operative traps are forbidden, except for farmers, trappers and dealers. The prohibition does not apply to designated unrestricted humane traps or to collectors with permits issued by the Minister.

Subsection 30a (7). All traps must be clearly identified, to facilitate enforcement of sections 30 and 30a and to prevent theft and breaches of section 63 (interference with traps).

Section 30b. A trap exchange program would permit old traps to be modified and updated, and would provide a means of introducing new appropriate traps.

SECTION 5. Subsection 1 (6) of Ontario Regulation 673/82 reads as follows:

(6) No person shall set a leg-hold trap for beaver, otter or mink unless the trap is,

(a) set under ice; or

(b) attached to,

(i) a sliding lock on a drowning wire or a device that will immediately submerge the captured animal in water and prevent it from resurfacing, or

(ii) a heavy object that will dislodge immediately upon springing of the trap and will submerge the captured animal in water and prevent it from resurfacing; or

(c) sufficiently heavy and set in such a manner, where the trap is set for mink, to submerge the captured mink in water immediately upon springing of the trap and prevent it from resurfacing.

The same subject-matter is dealt with more extensively by proposed subsection 30 (3) (section 3 of the Bill) which would apply to muskrat as well as to other aquatic species.

Bill 154 1983

An Act to amend the Game and Fish Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Paragraphs 3, 18 and 35 of section 1 of the *Game and Fish Act*, being chapter 182 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor: s. 1, pars. 3, 18 and 35, re-enacted

3. "body-gripping trap" means a trap designed to capture an animal by seizing and holding it by any part of its body, except the leg or foot, but does not include a snare or a trap designed to capture a mouse or rat;

. . . . .

18. "leg-hold trap" means a trap designed to capture an animal by seizing and holding it by the leg or foot, but does not include a snare or a trap designed to capture a mouse or rat;

. . . . .

35. "trap" means a spring trap, body-gripping trap, leg-hold trap, gin, pitfall, deadfall, snare, box or net used to capture an animal, but does not include a snare or a trap designed to capture a mouse or a rat, and "trapping" has a corresponding meaning.

2. Subsection 2 (3) of the said Act is repealed and the following substituted therefor: s. 2 (3), re-enacted

(3) Notwithstanding subsection (1), this Act applies to domestic animals and to persons referred to in clause (1) (b) in respect of the restrictions in sections 30 and 30a on the use of traps. Idem

3. Section 30 of the said Act is repealed and the following substituted therefor: s. 30, re-enacted

Interpretation

30.—(1) In this section and in section 30a, "animal" includes a domestic, fur-bearing or game animal.

Prohibition

(2) No person shall trap or attempt to trap an animal.

Exception: licensed trapper

(3) Subsection (2) does not apply to the holder of a licence to hunt or trap fur-bearing animals who uses,

(a) a body-gripping trap designated by the Minister as a humane body-gripping trap under clause (6) (a);

(b) a leg-hold trap or a snare that is,

(i) set under ice,

(ii) equipped with a sliding lock on a drowning wire or a device that will, immediately upon springing of the trap, submerge the captured animal completely and prevent every part of it from resurfacing, or

(iii) attached to a heavy object that will, immediately upon springing of the trap, dislodge so as to submerge the captured animal completely and prevent every part of it from resurfacing;

(c) a leg-hold trap that is set for mink or muskrat and is sufficiently heavy and set in such a manner that it will, immediately upon springing of the trap, submerge the captured animal completely and prevent every part of it from resurfacing;

(d) a padded leg-hold trap that is set for wolf or fox, or a trap that is designated by the Minister under clause (6) (b) as a trap for wolf or fox; or

(e) a trap designated by the Minister as a restricted humane trap under clause (6) (c).

Exception: farmer

(4) Subsection (2) does not apply to a farmer who uses a trap described in subsection (3), in the manner described in that subsection, on his own lands in defence or preservation of his property or in circumstances referred to in subsection 62 (7).

Exception: unrestricted humane trap

(5) Subsection (2) does not apply to a person who uses a trap designated by the Minister under clause (6) (d) as an unrestricted humane trap.

Minister may designate traps

(6) The Minister may, with the approval of the Lieutenant Governor in Council, make an order designating,

(a) a body-gripping trap as a humane body-gripping trap for the purpose of clause (3) (a);

(b) a trap, other than an unmodified steel-jawed leg-hold trap, as a trap for wolf or fox, for the purpose of clause (3) (d);

(c) a trap as a restricted humane trap for the purpose of clause (3) (e); and

(d) a trap as an unrestricted humane trap for the purposes of subsection (5) and subsection 30a (5).

4. The said Act is amended by adding thereto the following sections: ss. 30a, 30b, enacted

30a.—(1) Every person who sets a trap capable of holding or set to hold an animal alive shall tend the trap, Regular inspections of live-holding traps

(a) where it is set in the part of Ontario south of the northernmost east-west line of the Canadian National Railway, at least once in every twenty-four hour period; and

(b) where it is set in the part of Ontario north of the northernmost east-west line of the Canadian National Railway, at least once in every seventy-two hour period.

(2) No person shall set a trap that is mechanically unfit. Fitness

(3) No person shall purchase or possess a trap, except, Prohibition

(a) a farmer;

(b) the holder of a licence to hunt or trap fur-bearing animals;

(c) a dealer in traps; or

(d) a person to whom the Minister has issued a collector's permit under subsection (6).

(4) No person shall give possession of or sell a trap to any person except a person referred to in subsection (3). Idem

(5) Subsections (3) and (4) do not apply to, Exceptions: inoperative trap, unrestricted humane trap

(a) a trap that has been made inoperative; or

(b) a trap designated by the Minister as an unrestricted humane trap under clause 30 (6) (d).

Collector's permit

(6) The Minister may issue a collector's permit to a person permitting the person to possess operative traps, and may impose terms and conditions on the permit.

Identification

(7) No person shall set a trap that does not have,

(a) where the owner of the trap holds a licence to hunt or trap fur-bearing animals,

(i) the number of the registered trap-line area designated in the licence, if any, or

(ii) the licence number, if no registered trap-line is designated in the licence; or

(b) where the owner of the trap does not hold a licence to hunt or trap fur-bearing animals, the name of the owner,

clearly and permanently marked on or affixed to it.

Trap exchange program

30b. The Minister may establish and maintain a trap exchange program permitting farmers and holders of licences to hunt or trap fur-bearing animals to exchange leg-hold traps and unmodified Conibear traps for traps that are designated by the Minister under subsection 30 (6).

s. 1 (6) of O. Reg. 673/82, revoked

5. Subsection 1 (6) of Ontario Regulation 673/82, made under the said Act, shall be deemed to be revoked.

Commencement

6. This Act comes into force on the 1st day of October, 1984.

Short title

7. The short title of this Act is the *Game and Fish Amendment Act, 1983*.

Bill 155 Private Member's Bill

3RD SESSION, 32ND LEGISLATURE, ONTARIO
32 ELIZABETH II, 1983

Bill 155

An Act respecting Technological Change in the Workplace

Mr. Cassidy

1st Reading December 13th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the
Legislative Assembly
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Projet de loi 155 Privé

3e SESSION, 32e LÉGISLATURE, ONTARIO
32 ELIZABETH II, 1983

Projet de loi 155

Loi concernant les changements technologiques au lieu de travail

M. Cassidy

1re lecture 13 décembre 1983
2e lecture
3e lecture
sanction royale

Imprimé avec l'autorisation
de l'Assemblée législative
par l'Imprimeur de la Reine pour l'Ontario

EXPLANATORY NOTES

SECTION 1. Self-explanatory.

SECTION 2. The Act binds the Crown.

SECTION 3. Trade unions and employers may opt out of the Act only with the consent of the Ontario Labour Relations Board.

SECTION 4. Employees have the right to require the establishment of a joint technological change committee.

SECTION 5. The employer is required to report to the committee regularly, to notify the committee as soon as a decision to implement a technological change is made and to consult with the committee on alternative means of implementation of the change.

SECTION 6. Umbrella committees with a co-ordinating function may be established where employees work in more than one workplace, department or division of the employer.

SECTION 7. When a decision to implement a technological change is made, the joint technological change committee is responsible for developing a plan to notify employees, introduce the change in a manner that will minimize disruption and provide various compensating benefits for displaced employees. The employer is required to work with the committee and give it full access to staff, information and records. An umbrella committee may prepare a joint plan for several workplaces, departments or divisions where the employee representatives on the relevant committees require this.

SECTION 8. The minimum notice period before a technological change may be introduced is 180 days.

SECTION 9. Where the Ontario Labour Relations Board is satisfied that an employer has failed to report to the committee as required, failed to notify it of a proposed technological change, implemented a change before the minimum notice period has expired or substantially failed to implement a plan developed by a committee, the Board may order that implementation of the change be delayed for up to one year. The Board may also delay implementation where the committee has not produced a plan within 120 days of being notified of the change.

SECTION 10. A collective agreement may be reopened for bargaining over technological change if the trade union requests it. In that event the usual collective bargaining provisions, including the right to strike, would apply.

SECTION 11. Employees displaced by technological change are entitled to a week's severance pay for every year of employment with the employer.

SECTION 12. Dismissal, discipline or intimidation of employees because they seek to enforce this Act are prohibited.

SECTION 13. Contraventions of Board orders under section 9 and contraventions of section 12 are offences. The maximum fine is $5,000 on a first conviction ($10,000 for a corporation) and $10,000 on subsequent convictions ($20,000 for corporations). Each day that an employer fails to comply with a Board order under section 9 constitutes a separate offence.

SECTION 14. Self-explanatory.

SECTION 15. A Technological Change Bureau is created to assist joint technological change committees and engage in research and public education.

SECTION 16. Self-explanatory.

NOTES EXPLICATIVES

ARTICLE 1 Cet article se passe d'explications.

ARTICLE 2 La loi lie la Couronne.

ARTICLE 3 Les syndicats et les employeurs peuvent choisir de ne pas être régis par la loi, seulement avec le consentement de la Commission des relations de travail de l'Ontario.

ARTICLE 4 Les employés ont le droit d'exiger qu'un comité paritaire des changements technologiques soit créé.

ARTICLE 5 L'employeur est tenu de présenter régulièrement des rapports au comité. Il est également tenu d'aviser le comité dès qu'une décision de mettre en place un changement technologique a été prise et d'entretenir avec lui des consultations sur d'autres façons de mettre en place le changement proposé.

ARTICLE 6 Des comités de coordination peuvent être créés si des employés travaillent dans plus d'un lieu de travail, plus d'une section ou plus d'une division.

ARTICLE 7 En cas de décision de mettre en place un changement technologique, le comité paritaire des changements technologiques est chargé d'élaborer un projet en vue d'en informer les employés, d'introduire le changement d'une façon qui minimisera les perturbations et d'offrir des avantages compensateurs aux employés déplacés. L'employeur est tenu de travailler avec le comité et de lui donner toutes possibilités de consulter son personnel, ses renseignements et ses dossiers. Un comité de coordination peut élaborer un projet commun à l'intention de plusieurs lieux de travail, sections ou divisions si les représentants des employés qui font partie des comités pertinents le demandent.

ARTICLE 8 Un préavis d'au moins cent quatre-vingts jours doit être donné avant l'introduction d'un changement technologique.

ARTICLE 9 Si la Commission des relations de travail de l'Ontario est convaincue que l'employeur n'a pas présenté les rapports prévus au comité, ne l'a pas informé du projet d'introduire un changement technologique, a mis en place un changement technologique avant l'expiration de la période minimale ou n'a pas, pour une grande part, mis en place le projet proposé par le comité, elle peut ordonner que la mise en place du changement soit différée pendant une année au plus. La Commission peut également retarder la mise en place d'un changement si le comité n'a pas produit de projet au cours des cent vingt jours qui suivent la date à laquelle il a été avisé du changement.

ARTICLE 10 Une convention collective peut être rouverte à des fins de négociation sur le changement technologique si le syndicat le demande. Dans ce cas, les conditions habituelles relatives à la négociation collective, y compris le droit de grève, s'applique.

ARTICLE 11 Les employés déplacés en raison d'un changement technologique ont droit à une indemnité de licenciement qui équivaut à une semaine de travail multipliée par le nombre d'années à l'emploi de l'employeur.

ARTICLE 12 Il est interdit de congédier ou d'intimider les employés ou de leur imposer une peine disciplinaire parce qu'ils ont cherché à faire respecter la présente loi.

ARTICLE 13 Constituent des infractions une dérogation à une directive que la Commission donne en vertu de l'article 9 et les dérogations à l'article 12. L'amende maximale est fixée à 5 000 $ pour une première infraction (10 000 $ pour une personne morale) et à 10 000 $ pour une infraction subséquente (20 000 $ pour une personne morale). Chaque jour où l'employeur ne respecte pas la directive de la Commission constitue une infraction distinctive.

ARTICLE 14 Cet article se passe d'explications.

ARTICLE 15 Le Bureau des changements technologiques est créé afin d'aider les comités paritaires des changements technologiques, de faire des recherches et d'éduquer le public.

ARTICLE 16 Cet article se passe d'explications.

Bill 155 1983

An Act respecting Technological Change in the Workplace

Preamble

Whereas it is desirable to encourage employees and employers to respond to technological change, on the basis of meaningful consultation and full sharing of information, in a manner that will protect employees against adverse consequences while enhancing productivity and competitiveness;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Interpretation

1. In this Act,

(a) "Board" means the Ontario Labour Relations Board continued under the *Labour Relations Act*; R.S.O. 1980, c. 228

(b) "Bureau" means the Technological Change Bureau established under section 15;

(c) "committee" means a joint technological change committee established under subsection 4 (1);

(d) "employee" and "employer" have the same meanings as in the *Employment Standards Act*; R.S.O. 1980, c. 137

(e) "technological change" means the introduction into an employer's business or undertaking of equipment, material or a process that is different from what was previously used in the business or undertaking and that significantly affects the terms and conditions or security of employment of any of the employer's employees or results in a significant change in the manner in which the business or undertaking is carried on.

Application to Crown

2. This Act applies to the Crown and to all Crown agencies.

Projet de loi 155 1983

Loi concernant les changements technologiques au lieu de travail

Préambule

Attendu qu'il est souhaitable d'encourager les employés et les employeurs à réagir aux changements technologiques, grâce à des consultations profitables et à un échange complet de renseignements, d'une façon qui protégera les employés contre des répercussions défavorables tout en augmentant la productivité et la compétitivité;

Sa Majesté, de l'avis et du consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit:

Définitions

1 Les définitions qui suivent s'appliquent à la présente loi.

«Bureau»

«Bureau» Le Bureau des changements technologiques créé aux termes de l'article 15.

«technological change»

«changement technologique» Introduction au lieu de travail ou à l'entreprise d'une méthode ou de matériel différents de ceux qui y étaient précédemment utilisés et qui modifient grandement les conditions d'emploi des employés ou leur sécurité ou qui entraînent des changements importants dans la façon dont le lieu de travail ou l'entreprise fonctionne.

«committee»

«comité» Le comité paritaire des changements technologiques créé aux termes du paragraphe 4 (1).

«Board»

L.R.O. 1980, chap. 228

«Commission» La Commission des relations de travail de l'Ontario maintenue en fonctions en vertu de la *Loi sur les relations de travail.*

«employee» «employeur»

L.R.O. 1980, chap. 137

«employé» et «employeur» S'entendent au sens de la *Loi sur les normes d'emploi.*

Application à la Couronne

2 La présente loi s'applique à la Couronne et à tous ses organismes.

Application de la loi malgré une convention collective

3 La présente loi s'applique malgré une convention contraire à moins que la Commission, à la demande commune des parties

Board may permit opting out

3. This Act applies despite any agreement to the contrary, unless the Board, on the joint application of the parties to a collective agreement, consents to the inclusion of a provision that this Act does not apply to the parties during the term of the collective agreement.

Right of employees to require committee

4.—(1) An employer shall establish and maintain a committee,

(a) at the written request of ten employees; or

(b) where a trade union represents the employees, at the trade union's written request.

Composition

(2) A committee shall consist of at least four persons, half of whom shall be selected by the employer and half of whom shall be selected by the employees they are to represent or, where a trade union represents the employees, by the trade union, and shall be employees who do not exercise managerial functions.

Non-voting trade union representatives

(3) Where a trade union represents the employees, the trade union may select not more than two persons who are not employees to be non-voting members of the committee.

Joint chair

(4) A committee shall be chaired jointly by an employee representative and an employer representative.

Meetings

(5) A committee shall meet,

(a) at least once in every three month period; and

(b) at the call of either holder of the chair.

Entitlement to time from work

(6) A member of a committee selected under subsection (2) is entitled to such time from work as is necessary to attend meetings of the committee and to carry out his or her duties under subsection 7 (1), and the time so spent shall be deemed to be work time for which the member shall be paid by the employer at the regular or premium rate as may be proper.

Duty of employer

5.—(1) Where a committee has been established under subsection 4 (1), the employer shall,

(a) report to the committee,

(i) at the request of the employee representatives, and

(ii) at least once in every six month period,

à une convention collective, n'accepte l'inclusion d'une disposition portant que la présente loi ne s'applique pas aux parties pendant la durée de validité de la convention collective.

Création d'un comité

4 (1) L'employeur crée un comité :

a) à la demande écrite de dix employés;

b) à la demande écrite du syndicat, si un syndicat représente les employés.

Composition

(2) Le comité se compose d'au moins quatre personnes, dont la moitié est nommée par l'employeur et l'autre moitié est choisie par les employés qu'elles représentent ou par le syndicat, si un syndicat représente les employés. Les membres du comité ne doivent pas occuper des fonctions directoriales.

Représentants du syndicat sans droit de vote

(3) Si un syndicat représente les employés, le syndicat peut choisir au maximum deux personnes qui ne sont pas des employés à titre de membres du comité sans droit de vote.

Coprésidence

(4) La présidence du comité est assurée à la fois par un représentant des employés et un représentant de l'employeur.

Réunions

(5) Le comité se rencontre :

a) au moins une fois tous les trois mois;

b) lorsque l'un des présidents convoque une réunion.

Droit de s'absenter

(6) Chaque membre du comité choisi conformément au paragraphe (2) a le droit de s'absenter de son travail pour assister aux réunions du comité et pour accomplir ses fonctions en application du paragraphe 7 (1). Pendant ces absences, il est réputé être demeuré à son travail et son employeur doit lui verser son taux normal de salaire ou son taux de majoration, selon le cas.

Devoirs de l'employeur

5 (1) Si un comité a été créé, l'employeur :

a) lui présente un rapport :

(i) à la demande des représentants des employés,

(ii) au moins une fois tous les six mois,

sur :

on,

(iii) the prospects for the employer's business or undertaking,

(iv) any changes in markets, corporate plans, technology or the environment that may affect the manner in which the business or undertaking is carried on, and

(v) any technological change or possible technological change that the employer is considering; and

(b) consult with the committee on long-range strategy for the employer's business or undertaking, planning for the introduction and use of new technologies and the development and implementation of a human resources plan.

Idem

(2) Where a committee has been established under subsection 4 (1), the employer shall, as soon as he or she has made a decision to implement a technological change,

(a) inform the committee fully of,

(i) the nature of the technological change,

(ii) its potential effect on the employers' employees, and

(iii) its potential contribution to the productivity and competitiveness of the employer's business or undertaking; and

(b) consult with the committee with respect to alternative means of implementation in order to protect employees against adverse consequences while enhancing productivity and competitiveness.

Umbrella committee

6.—(1) Where an employer's business or undertaking is carried on at more than one workplace or consists of more than one department or division,

(a) subsection 4 (1) applies to each workplace, department or division; and

(b) where committees have been established representing 50 per cent or more of the employer's employees,

(iii) les prévisions en ce qui concerne son activité ou son entreprise,

(iv) les changements relatifs aux marchés, aux projets de l'entreprise, à la technologie ou à l'environnement qui sont susceptibles d'influer sur le fonctionnement de l'activité ou de l'entreprise,

(v) les changements technologiques, éventuels ou non, qu'il envisage;

b) entretient des consultations avec le comité sur ses plans d'action à long terme concernant son activité ou son entreprise, le planification de l'introduction et de l'utilisation de nouvelles technologies, et l'élaboration et la mise en oeuvre d'un programme de ressources humaines.

Idem

(2) Si un comité a été créé en vertu du paragraphe 4 (1), l'employeur doit, dès qu'il a pris la décision de mettre en place un changement technologique :

a) informer le comité à fond sur :

(i) la nature de ce changement,

(ii) ses répercussions éventuelles sur les employés,

(iii) sa contribution éventuelle à la productivité et à la compétitivité de l'activité ou de l'entreprise de l'employeur;

b) entretenir des consultations avec le comité sur d'autres façons de mettre en place le changement technologique afin de protéger les employés contre des répercussions défavorables tout en augmentant la productivité et la compétitivité.

Comité de coordination

6 (1) Si l'employeur exerce son activité ou son entreprise à plus d'un endroit ou si son activité ou son entreprise comprend plus d'une section ou d'une division :

a) le paragraphe 4 (1) s'applique à chaque lieu de travail, section ou division;

b) et si des comités représentant 50 pour cent ou plus des employés ont été créés, l'employeur crée un comité de coordination :

the employer shall establish and maintain an umbrella committee,

(i) at the written request of employee representatives from two or more committees, or

(ii) at the written request of a trade union or trade unions representing employees in two or more workplaces, departments or divisions.

Idem

(2) Subsections 4 (2), (3), (4), (5) and (6) and section 5 apply to an umbrella committee.

Duties of umbrella committee

(3) An umbrella committee shall,

(a) consult with committees and with the employer on technological changes and possible technological changes affecting more than one workplace, department or division; and

(b) assist committees in co-ordinating their work.

Duty of committee

7.—(1) Where an employer informs a joint committee of a decision to make a technological change, the committee shall develop a plan for,

(a) informing all the employer's employees, especially those who may be directly affected by the technological change, of the decision;

(b) implementing the technological change in a manner that will minimize displacement, reassignment, layoffs, transfers, downgrading and deskilling of employees; and

(c) providing employees directly affected by the technological change with,

(i) preferential access to alternative employment with the employer, at the same or at another workplace,

(ii) training for alternative employment, at the employer's expense,

(iii) mobility allowances,

(iv) opportunities for job sharing,

(v) opportunities for early retirement, and

(i) à la demande écrite des représentants des employés de deux comités ou plus,

(ii) à la demande écrite d'un ou de plusieurs syndicats qui représentent les employés dans deux lieux de travail, sections ou divisions ou plus.

Idem

(2) Les paragraphes 4 (2) à (6) et l'article 5 s'appliquent au comité de coordination.

Fonctions du comité de coordination

(3) Le comité de coordination :

a) entretient des consultations avec les comités et l'employeur sur les changements technologiques, éventuels ou non, qui touchent plus d'un lieu de travail, plus d'une section ou plus d'une division;

b) aide les comités à coordonner leur travail.

Fonctions du comité

7 (1) Si l'employeur informe le comité paritaire de sa décision d'introduire un changement technologique, le comité élabore un projet en vue :

a) d'en informer les employés, et plus particulièrement ceux qui peuvent être directement touchés par le changement technologique;

b) de mettre en place le changement technologique d'une façon qui minimisera le déplacement, la réaffectation, la mise à pied, le transfert, le déclassement et la banalisation des employés;

c) d'accorder aux employés directement touchés par le changement technologique :

(i) la priorité en ce qui concerne l'obtention d'un-autre emploi auprès de l'employeur, au même lieu de travail ou à un autre,

(ii) des cours de formation pour un autre emploi aux frais de l'employeur,

(iii) des allocations de mobilité,

(iv) la possibilité de partager un emploi,

(v) la possibilité de prendre une préretraite,

(vi) any other assistance that the committee considers desirable to assist the employees' adjustment.

Employer to consult with committee

(2) The employer shall consult with the committee in developing a plan under subsection (1), shall consider alternative means of implementation of the technological change and shall give the committee full access, on a confidential basis, to the employer's personnel records, to information about the technological change and to the technical or management staff or consultants responsible for planning or implementing the technological change.

Committee may consult with employees

(3) The committee may consult with the employees directly affected by the technological change on changes in,

(a) equipment and methods;

(b) work practices and working hours;

(c) training; and

(d) products and services produced or delivered,

that may be desirable to maintain employment security and to enhance the productivity and competitiveness of the business or undertaking.

Bureau may assist

(4) The committee may request the assistance of the Bureau in developing a plan under subsection (1).

Plan may deal with more than one change

(5) A plan under subsection (1) may deal with more than one technological change.

Joint plan by umbrella committee

(6) The employee representatives of two or more committees established by the same employer may require an umbrella committee established under clause 6 (1) (b) to develop a joint plan on behalf of those committees, and where an umbrella committee is required to develop a joint plan, subsections (1) to (5) apply to the umbrella committee with necessary modifications.

Minimum notice period

8. Where a committee has been established under subsection 4 (1), the employer shall not implement a technological change before a day 180 days after the day the committee was informed under clause 5 (2) (a).

(vi) l'aide que le comité juge souhaitable afin d'aider l'employé à s'ajuster.

Consultations entre l'employeur et le comité

(2) L'employeur entretient des consultations avec le comité pendant l'élaboration de ce projet, étudie d'autres façons de mettre en place le changement technologique et lui accorde toutes possibilités pour pouvoir consulter, confidentiellement, les dossiers du personnel, les renseignements sur le changement technologique, le personnel technique ou administratif, ou les experts-conseils responsables de la planification ou de la mise en place du changement technologique.

Consultations avec les employés

(3) Le comité peut entretenir des consultations avec les employés directement touchés par le changement technologique sur les changements concernant :

a) le matériel et les méthodes;

b) les usages relatifs au travail et les heures de travail;

c) la formation;

d) les produits fabriqués ou délivrés et les services rendus,

qui peuvent être souhaitables en vue de maintenir la sécurité d'emploi et d'augmenter la productivité et la compétitivité de l'activité ou de l'entreprise.

Aide du Bureau

(4) Le comité peut demander au Bureau de l'aider à élaborer ce projet.

Plus d'un changement

(5) Ce projet peut traiter de plus d'un changement technologique.

Projet commun du comité de coordination

(6) Les représentants des employés de deux comités ou plus constitués par le même employeur peuvent exiger qu'un comité de coordination soit créé en vertu de l'alinéa 6 (1) b) en vue d'élaborer un projet commun pour le compte de ces comités. Dans ce cas, les paragraphes (1) à (5) s'appliquent, avec les modifications nécessaires, au comité de coordination.

Préavis

8 Si un comité a été créé en vertu du paragraphe 4 (1), l'employeur ne met pas en place un changement technologique tant que cent quatre-vingts jours ne se sont pas écoulés après le jour où le comité a été informé en vertu de l'alinéa 5 (2) a).

Board may order postponement of technological change

9.—(1) Where the Board is satisfied that an employer,

(a) has not complied with section 5 or subsection 7 (2) in respect of a technological change;

(b) has substantially failed to implement a plan developed by a committee under subsection 7 (1); or

(c) has contravened section 8,

the Board may, upon the application of ten employees or, where a trade union represents the employees, upon the trade union's application, order that the implementation of the technological change be postponed for a period not exceeding twelve months from the date of the Board's order.

Idem

(2) Where a committee has not developed a plan under subsection 7 (1) by a day 120 days after the day the committee was informed under clause 5 (2) (a), the Board may, upon the application of ten employees or, where a trade union represents the employees, upon the trade union's application, order that the implementation of the technological change be postponed for a period not exceeding twelve months from the date of the Board's order.

Collective agreement may be reopened R.S.O.1980, c. 228

10. Notwithstanding subsection 72 (1) of the *Labour Relations Act*, a collective agreement as defined in that Act may be reopened, at the request of the trade union that represents the employees, for bargaining over the implementation of technological change, and sections 15 to 34 of that Act, both inclusive, apply to the bargaining with necessary modifications.

Severance pay

11.—(1) Where an employee's employment is terminated and the termination is caused by the employer's implementation of a technological change, the employer shall pay severance pay to the employee in an amount equal to the amount the employee would have received at the regular rate for a regular non-overtime work week multiplied by the number of years of employment with the employer.

Application

(2) Subsection (1) applies to,

(a) a regular full-time employee and a regular part-time employee;

(b) an employee whose employment is terminated as a result of a strike or lock-out;

(c) an employee who is temporarily absent due to illness or injury;

Prorogation du changement

9 (1) Si la Commission est convaincue que l'employeur :

a) n'a pas respecté l'article 5 ou le paragraphe 7 (2) en ce qui concerne un changement technologique;

b) n'a pas, pour une grande part, mis en oeuvre le projet élaboré par un comité en vertu du paragraphe 7 (1);

c) a enfreint l'article 8,

elle peut, à la demande de dix employés ou, si un syndicat représente les employés, à la demande du syndicat, ordonner que le mise en place du changement technologique soit différée d'au plus douze mois à partir de la date de l'ordonnance de la Commission.

Idem

(2) Si un comité n'a pas élaboré de projet en vertu du paragraphe 7 (1) au cours des cent vingt jours qui suivent la date à laquelle le comité a été informé en vertu de l'alinéa 5 (2) a), la Commission peut, à la demande de dix employés ou, si un syndicat représente les employés, à la demande du syndicat, ordonner que la mise en place du changement technologique soit différée d'au plus douze mois à partir de la date de l'ordonnance de la Commission.

Convention collective L.R.O. 1980, chap. 228

10 Par dérogation au paragraphe 72 (1) de la *Loi sur les relations de travail* la convention collective au sens de cette loi peut être rouverte, à la demande du syndicat qui représente les employés, à des fins de négociation sur la mise en place du changement technologique. Les article 15 à 34 inclusivement de cette loi s'appliquent au processus de négociation avec les modifications de circonstance.

Indemnité de licenciement

11 (1) Si un employé est licencié à cause de la mise en place d'un changement technologique, l'employeur lui verse une indemnité de licenciement. Cette indemnité est égale au montant que l'employé aurait eu le droit de recevoir à son taux normal pour une semaine normale de travail sans heures supplémentaires multiplié par le nombre d'années à l'emploi de l'employeur.

Champ d'application

(2) Le paragraphe (1) s'applique à :

a) l'employé permanent à temps plein et à l'employé permanent à temps partiel;

b) l'employé licencié en raison d'une grève ou d'un lockout;

c) l'employé temporairement absent en raison d'une maladie ou d'une blessure;

(d) an employee who received or was entitled to receive notice of termination but who died before the employment was terminated or would have been terminated if notice of termination had been given;

(e) an employee who loses his or her employment by another employee's exercise of a seniority right; and

(f) an employee who, upon having his or her employment terminated, retires and is entitled to receive a reduced pension benefit.

Exceptions

(3) Subsection (1) does not apply to,

R.S.O. 1980, c. 137

(a) an employee who is entitled to severance pay under section 40a of the *Employment Standards Act*;

(b) an employee who refuses an offer of reasonable alternative employment with the employer;

(c) an employee who refuses to exercise seniority rights to obtain reasonable alternative employment;

(d) an employee who refuses to waive any right to be recalled for employment;

(e) an employee who, upon having his or her employment terminated, retires and receives an actuarially unreduced pension benefit;

(f) an employee whose employer is engaged in the construction, alteration, maintenance or demolition of buildings, structures, roads, sewers, pipelines, mains, tunnels or other works where the employee works at the site thereof; or

(g) an employee who is employed under an arrangement whereby the employee may elect to work or not when requested to do so.

Severance pay in addition to other payment

(4) Severance pay under this section is payable to the employee, without set-off or deduction, in addition to any payment under,

(a) the *Employment Standards Act*, except severance pay under section 40a of that Act; or

(b) the contract of employment,

except for,

d) l'employé qui a reçu ou qui avait le droit de recevoir un préavis de licenciement mais qui est décédé avant la date de son licenciement ou la date à laquelle il aurait été licencié si ce préavis avait été donné;

e) l'employé licencié en raison de l'exercice par un autre employé de son droit d'ancienneté;

f) l'employé qui, lorsqu'il est licencié, prend sa retraite et a droit à une prestation de pension réduite.

Exceptions

(3) Le paragraphe (1) ne s'applique pas à :

a) l'employé qui a droit à une indemnité de licenciement en vertu de l'article 40 a) de la *Loi sur les normes d'emploi*; L.R.O. 1980, chap. 137

b) l'employé qui refuse l'offre par son employeur d'un travail équivalent;

c) l'employé qui refuse de faire valoir ses droits d'ancienneté pour obtenir un tavail équivalent;

d) l'employé qui refuse de renoncer au droit de réintégrer son emploi;

e) l'employé qui, lorsqu'il est licencié, prend sa retraite et touche une prestation de retraite qui n'est pas réduite d'un point de vue actuariel;

f) l'employé dont l'employeur se livre à l'édification, la réparation, l'entretien ou la démolition de bâtiments, de constructions, de routes, d'égouts, de pipelines, de canalisations, de tunnels ou autres ouvrages si l'employé travaille sur le chantier;

g) l'employé qui travaille aux termes d'un arrangement en vertu duquel il peut choisir de travailler ou non si la demande lui en est faite.

Indemnité de licenciement en sus d'autres paiements

(4) Une indemnité de licenciement accordée en vertu du présent article est payable à l'employé, sans compensation ou retenues, en supplément de tout autre paiement en vertu :

a) de la *Loi sur les normes d'emploi*, à l'exception d'une indemnité de licenciement accordée en vertu de l'article 40a de cette loi; L.R.O. 1980, chap. 137

b) du contrat d'emploi,

à l'exception :

(c) supplementary unemployment benefits payable to and received by the employee; or

(d) payments made to the employee under a contractual severance pay scheme under which payments for loss of employment based upon length of service are provided.

Prior employment included

(5) Employment before the coming into force of this section shall be taken into account in calculating the years of employment of an employee to whom this section applies.

Employment not included

(6) A year of employment for which an employee has been paid severance pay shall be excluded in any subsequent calculation of severance pay for that employee.

Application of R.S.O. 1980, c. 137

(7) Severance pay under this section shall be deemed to be wages for the purposes of the *Employment Standards Act* and sections 45 to 56 of that Act, both inclusive, apply with necessary modifications.

No discipline, dismissal, etc., by employer

12.—(1) No employer or person acting on behalf of an employer shall,

(a) dismiss or threaten to dismiss;

(b) discipline or suspend or threaten to discipline or suspend;

(c) impose any penalty upon; or

(d) intimidate or coerce,

an employee because he or she has made an application or otherwise sought to enforce rights under this Act.

s. 24 (2-8), of R.S.O. 1980, c. 321 to apply

(2) Subsections 24 (2) to (8), both inclusive, of the *Occupational Health and Safety Act* apply, with necessary modifications, to a contravention of subsection (1).

Offences

13.—(1) Every person who,

(a) fails to comply with an order made by the Board under section 9; or

(b) contravenes subsection 12 (1),

is guilty of an offence and on conviction is liable to a fine, upon a first conviction, of not more than $5,000, and upon a subsequent conviction, of not more than $10,000.

c) des prestations d'assurance-chômage supplémentaires payables à l'employé et qu'il a touchées;

d) des paiements que l'employé a touchés en vertu d'un régime contractuel d'indemnités de licenciement qui prévoit que ces indemnités sont versées en fonction de l'ancienneté.

Années d'emploi antérieures

(5) Dans le calcul des années d'emploi d'un employé visé par le présent article, il faut tenir compte de la période d'emploi écoulée avant son entrée en vigueur.

Cas où une année d'emploi n'est pas incluse

(6) Il ne faut pas tenir compte d'une année d'emploi pour laquelle un employé a touché une indemnité de licenciement dans le calcul subséquent de l'indemnité de licenciement de cet employé.

Champ d'application du chap. 137 des L.R.O. de 1980

(7) L'indemnité de licenciement est réputée un salaire pour l'application de la *Loi sur les normes d'emploi*. Les articles 45 à 56 inclusivement de cette loi s'appliquent avec les modifications de circonstance.

Interdiction pour l'employeur de congédier un employé, etc.

12 (1) Il est interdit à l'employeur ou à la personne qui agit en son nom :

a) de congédier ou de menacer de congédier un employé;

b) d'imposer une peine disciplinaire à un employé ou de la suspendre ou de menacer de ce faire;

c) de prendre des sanctions à l'égard d'un employé;

d) d'intimider ou de contraindre un employé, parce que ce dernier a fait une demande ou a cherché autrement à faire valoir les droits que lui accorde la présente loi.

Application des par. 24 (2) à (8) du chap. 321 des L.R.O. de 1980

(2) Les paragraphes 24 (2) à (8) inclusivement de la *Loi sur la santé et la sécurité au travail* s'appliquent, avec les modifications de circonstance, à une infraction au paragraphe (1).

Infractions

13 (1) Quiconque :

a) ne respecte pas la directive que la Commission donne en vertu de l'article 9;

b) enfreint le paragraphe 12 (1),

est coupable d'infraction et passible, sur déclaration de culpabilité, pour une première infraction, d'une amende d'au plus 5 000 $ et, pour une infraction subséquente, d'une amende d'au plus 10 000 $.

Continued offence

(2) Each day that an employer fails to comply with an order made by the Board under section 9 constitutes a separate offence.

Corporations

(3) Where a corporation is convicted under subsection (1), the maximum penalty that may be imposed upon the corporation is, upon a first conviction, $10,000, and upon a subsequent conviction, $20,000.

Directors and officers

(4) Where a corporation is convicted under subsection (1), each director or officer of the corporation who authorized, permitted or acquiesced in the offence is a party to the offence.

Administration

14. The Minister of Labour is responsible for the administration of this Act.

Technological Change Bureau

15. There shall be a bureau in the Ministry of Labour to be called the Technological Change Bureau which shall,

(a) assist committees, on their request, in developing plans and consulting with employers under section 7;

(b) conduct research into,

(i) matters relating to the employment and economic effects and human impact of technological change,

(ii) the effects of technological change on the health and safety of employees, and

(iii) methods of minimizing the disruptive effect of technological change on workers and improving the effectiveness of adjustment policies; and

(c) promote awareness of the issues related to technological change by public education and other means.

Regulations: retraining fund

16. The Lieutenant Governor in Council may make regulations,

(a) establishing a fund for the retraining of employees displaced by the implementation of technological changes;

(b) requiring employers or a class or classes of employers to pay levies into the fund established under clause (a).

(2) Chaque jour où l'employeur ne respecte pas la directive de la Commission constitue une infraction distincte. Poursuite de l'infraction

(3) En case de déclaration de culpabilité d'une personne morale, la peine maximale qui peut lui être imposée est, pour une première infraction, 10 000 $ et, pour une infraction subséquente, 20 000 $. Personne morale

(4) En cas de déclaration de culpabilité d'une personne morale, chaque administrateur ou dirigeant qui autorise ou permet cette infraction ou y donne son assentiment est complice. Complicité de l'administrateur ou du dirigeant

14 Le ministre du Travail est responsable de l'application de la présente loi. Application

15 Le ministère du Travail comprend le Bureau des changements technologiques dont la mission est la suivante : Bureau des changements technologiques

a) aider les comités, à leur demande, à élaborer des projets et à entretenir des consultations avec les employeurs en vertu de l'article 7;

b) faire des recherches sur :

(i) des questions reliées aux conséquences que les changements technologiques entraînent sur l'emploi, l'économie et les humains,

(ii) les conséquences que les changements technologiques entraînent sur la santé et la sécurité des employés,

(iii) des méthodes pour minimiser les conséquences perturbatrices des changements technologiques sur les travailleurs et pour améliorer l'efficacité des lignes directrices relatives à l'ajustement des employés;

c) favoriser une prise de conscience des questions liées aux changements technologiques grâce à l'éducation du public et à d'autres moyens.

16 Le lieutenant-gouverneur en conseil peut, par réglement : Réglements : fonds de recyclage

a) créer un fonds destiné au recyclage des employés déplacés par la mise en place de changements technologiques;

b) obliger des employeurs ou une catégorie d'employeurs à verser des contributions au fonds.

Commencement

17. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

18. The short title of this Act is the *Technological Change Act, 1983*.

17 La présente loi entre en vigueur le jour que proclame le lieutenant-gouverneur. Entrée en vigueur

18 Le titre abrégé de la présente loi est *Loi de 1983 sur les changements technologiques*. Titre abrégé

Publicati

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

Bill 156

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An Act respecting Conveyancing Documents and Procedures and the Recording of Title to Real Property

The Hon. R. G. Elgie
Minister of Consumer and Commercial Relations

1st Reading December 14th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTES

The Bill, intended to facilitate the wider use of modern information technology in Ontario's land registration systems, is designed to take effect across the province in stages.

Part I (Documents) will apply to the parts of Ontario designated by regulation. Its provisions deal primarily with the form and execution of conveyancing documents and are capable of functioning in registry offices which are not automated. Users will be required to employ simplified standard forms from which most affidavits and seals have been eliminated. A scheme allowing the registration of short form mortgages, incorporating standard terms which will be on file but not repeated in each mortgage document, is included.

Part II (Automated Recording and Property Mapping) authorizes the further designation of areas to which Part I already applies, as areas in which automated recording and property mapping systems will be employed.

Part III contains amendments to nine related statutes.

Part I (DOCUMENTS)

SECTION 1. Self-explanatory.

SECTION 2. Part I is to apply to conveyancing documents that affect land in the areas designated by regulation.

SECTION 3. Conveyancing documents, to qualify for registration under the *Registry Act* or *Land Titles Act,* or deposit under the *Registry Act,* must comply with Part I and the regulations. However, documents executed before the relevant area was brought under Part I are exempted from this requirement, and the Director of Land Registration and District Court judges are also empowered to permit the registration or deposit of documents which do not satisfy the requirements of Part I and the regulations. Non-compliance with the registration requirements of Part I and the regulations does not invalidate a document once registered or deposited.

SECTION 4. Documents which do not satisfy the formal requirements of Part I and the regulations may be registered if they are attached to documents which do satisfy those requirements. (See also clause 3 (1) (b) of the Bill.)

SECTION 5. The traditional four covenants and release and various covenants for specific situations, currently deemed to be included in deeds and transfers by virtue of section 23 of the *Conveyancing and Law of Property Act* and the *Short Forms of Conveyances Act,* are repeated in more modern language and deemed to be included in transfers to which Part I applies.

SECTION 6. Mortgages of *Registry Act* land (unlike mortgages of *Land Titles Act* land) currently operate as conveyances of the legal estate in the land to the mortgagee, the mortgagor retaining only the equity of redemption. Section 6 eliminates this concept from mortgages of land to which Part I applies, while preserving all the rights and remedies enjoyed by mortgagors and mortgagees.

SECTION 7. The traditional covenants currently deemed to be included in mortgages by virtue of sections 7 and 8 of the *Mortgages Act* and the *Short Forms of Mortgages Act* are adjusted to take account of the amendment made by section 6 of the Bill, repeated in more modern language and deemed to be included in mortgages (referred to throughout the Bill as "charges") to which Part I applies.

A mortgage in the prescribed form is deemed to include any standard mortgage terms that are prescribed by regulation, unless they are specifically excluded or the short form scheme is used (see explanatory note for sections 8 to 12 of the Bill). This will permit the adoption of basic uniform mortgage terms in routine transactions.

SECTIONS 8 to 12. These sections create a scheme for the registration of short form mortgages. A lender who has filed a set of standard mortgage terms with the Director may register

short form mortgages which incorporate the standard mortgage terms by referring to the set's filing number. Provision is made for the variation of terms in individual short form mortgages. A lender who wishes to make general amendments to the standard mortgage terms must file a new set of terms.

Lenders are required to provide copies of their standard mortgage terms to borrowers before a mortgage is executed.

The Director may require lenders to file standard mortgage terms that they use frequently and to register short form rather than long form mortgages.

SECTION 13. Where a transferor or chargor is represented by a lawyer, the transferor or chargor is required to make the statement contemplated by subsection 42 (3) of the *Family Law Reform Act* (see section 18 of the Bill), and the lawyer is required to execute the document to indicate that he or she has explained the effects of section 49 of the *Planning Act, 1983* to the client. These new requirements are related to the elimination of affidavits of spousal status and affidavits for *Planning Act* purposes, which will no longer be required (where the lands being transferred or charged are subject to Part I) from persons represented by lawyers.

SECTION 14. Parties executing conveyancing documents will no longer be required to do so under seal.

SECTION 15. Self-explanatory.

Part II (AUTOMATED RECORDING AND PROPERTY MAPPING)

SECTION 16. Areas to which Part I applies may be further designated by regulation as areas in which automated recording and property mapping systems will be employed.

Part III (AMENDMENTS TO STATUTE LAW)

SECTION 17. *Conveyancing and Law of Property Act*

Subsections 1 and 2. References to a receipt for consideration money in sections 6 and 7 of the Act are replaced by references to a statement of consideration money, because the form of transfer contemplated by Part I will contain a recital of the consideration rather than a receipt as such.

Subsection 3. Conveyances of land in parts of Ontario subject to Part I will include the implied covenants found in section 5 of the Bill, making subsections 23 (1), (2), (3) and (4) of the *Conveyancing and Law of Property Act* superfluous.

SECTION 18. *Family Law Reform Act*

Subsection 1. In areas subject to Part I, a statement by a person conveying or charging land will be acceptable as an alternative to the affidavit contemplated by subsection 42 (3) of the *Family Law Reform Act.*

Subsection 2. The sanction provided in clause 45 (1) (f) of the Act against giving a false affidavit under subsection 42 (3) is extended to false statements under that subsection.

SECTION 19. *Land Titles Act*

Subsection 1. Self-explanatory.

Subsection 2. A reference to the fee and receiving book is deleted because a land registrar's fee and receiving record will not necessarily be in book form where automated recording is in effect.

Subsection 3. Self-explanatory.

Subsection 4. Users of the automated index are entitled to rely on it.

Subsection 5. Self-explanatory.

Subsections 6 and 7. The broader word "record" is substituted for the word "book" because land registry records will not necessarily be in book form where automated recording is in effect.

Subsection 8. Entries will not be capable of being signed (as existing subsection 81 (3) of the *Land Titles Act* requires) if they are made electronically. The broader concept of approval is used instead.

Subsection 9. The new subsection is complementary to section 14 of the Bill.

Subsection 10. Subsection 93 (5) of the *Land Titles Act* requires the authorization of the parties or their solicitors for the registration of a bond mortgage as a charge on land. Where Part I applies bond mortgages will be registered as schedules to the prescribed form of charge, executed by the party giving the charge, and specific authorization for registration will no longer be necessary.

Subsection 11. Charges of land in parts of Ontario subject to Part I will include the implied covenants found in section 7 of the Bill, making sections 94, 95, 96 and 97 of the *Land Titles Act* superfluous.

Subsection 12. Transfers of leasehold land in parts of Ontario subject to Part I will include the implied covenants found in section 5 of the Bill, making section 109 of the *Land Titles Act* superfluous.

Subsection 13. Section 141a provides for the establishment and maintenance of the automated recording and property mapping systems contemplated by Part II. These systems will require that records be organized according to property identifiers, and the section also creates a mechanism for the assignment of the identifiers, which will give access to the automated parcel register and to the property maps. Pre-system records may be incorporated into the automated parcel register as the Director instructs.

Section 141b applies to all Part I lands and sets standards for property descriptions.

Subsection 14. Section 147 of the *Land Titles Act* allows land registrars to prepare index plans to facilitate property description. No new index plans will be required for lands that are subject to Part II and organized according to property identifiers.

Subsections 15 and 16. Self-explanatory.

Subsection 17. Land registrars for areas subject to Part I need not retain original documents or records if they retain facsimiles of them, and they may supply facsimiles, copies and certified copies of facsimiles to users.

Subsection 18. This provision is intended to ensure that the output of automated land registry record-keeping systems will be admissible in evidence to the same extent as the original input, although it may appear in a different form, and to provide that output may also be admitted where there is no original as such.

Subsection 19. References to written alterations are deleted. Because tampering with electronic records is a serious and potentially disruptive offence, especially when committed on a large scale, a separate fine may be imposed for each record affected.

Subsection 20. Subsections 166 (1), (2), (3) and (4) of the *Land Titles Act* deal with addresses for service, a subject which will be covered by regulations under Part I.

SECTION 20. *Mortgages Act*

Subsection 1. Mortgages of land in parts of Ontario subject to Part I will include the implied covenants found in section 7 of the Bill, making sections 7 and 8 of the *Mortgages Act* superfluous.

Subsection 2. The proposed section is identical to existing section 6 of the *Short Forms of Mortgages Act*. Since that Act will be consulted less frequently as Part I is extended across the province (see section 25 of the Bill), this provision is, in effect, transferred to the *Mortgages Act*.

SECTION 21. *Planning Act, 1983*

Proposed subsection 49 (21a) provides that where a deed or transfer contains prescribed statements by the grantor and lawyers on both sides, any contraventions of the *Planning Act* up to and including the deed or transfer are, in effect, forgiven.

The search of title for *Planning Act* purposes carried out by a grantee's lawyer to support his or her prescribed statement need not go back beyond the most recent set of prescribed statements that are registered.

The Minister of Municipal Affairs and Housing may, by an order that takes effect upon registration, withdraw any land from the application of subsection 49 (21a).

A false statement made under subsection 49 (21a) is an offence punishable by a fine whose maximum level represents the value of the improperly subdivided lands immediately after the subdivision took place.

SECTION 22. *Registry Act*

Subsection 1. Self-explanatory.

Subsection 2. Land registrars for areas subject to Part I need not retain original documents or records if they retain facsimiles of them, and they may supply facsimiles, copies and certified copies of facsimiles to users.

Subsection 3. This provision is intended to ensure that the output of automated land registry record-keeping systems will be admissible in evidence to the same extent as the original input, although it may appear in a different form, and that output may also be admitted where there is no original as such.

Subsection 4. The amendment is complementary to the amendment made by subsection (2).

Subsection 5. The deletion of a reference to manual or mechanical reproduction of books is intended to authorize land registrars to use any available copying technology.

Subsections 6 and 7. Land registrars for areas subject to Part I need not retain original record books if they retain facsimiles of them. Ruled-off mortgages are added to the category of instruments which need not be copied when an abstract index is copied.

Subsections 8 and 9. Section 20a provides for the establishment and maintenance of the automated recording and property mapping systems contemplated by Part II. These systems will require that records be organized according to property identifiers, and the section also creates a mechanism for the assignment of the identifiers, which will give access to the automated abstract index and to the property maps. Pre-system records may be incorporated into the automated abstract index as the Director instructs. Subsections 20 (1), (2) and (3) of the *Registry Act* relate to the non-automated abstract index and will not apply to land in parts of Ontario subject to Part II.

Subsection 10. A reference to the registration requirements of Part I and the regulations made thereunder is added.

Subsections 11 and 12. Property description requirements for instruments affecting land in parts of Ontario subject to Part I will be somewhat different from existing requirements.

Subsection 13. Affidavits of execution will not be required for the registration of instruments affecting land in parts of Ontario subject to Part I, except in the case of transfers and charges given by persons who are not represented by lawyers.

Subsections 14 and 15. Where a court of record or a corporation executes an instrument affecting land in a part of Ontario subject to Part I, the execution requirements will be somewhat different from existing requirements. Clause 32a (3) (b) reflects the fact that corporations under the *Business Corporations Act, 1982* are not required to have seals.

Subsection 16. Section 37 of the *Registry Act* deals with addresses for service, a subject which will be covered by regulations under Part I.

Subsection 17. Affidavits of age will not be required for the registration of instruments affecting land in parts of Ontario subject to Part I, and affidavits of spousal status will not be required except in the case of transfers and charges given by persons who are not represented by lawyers.

Subsection 18. Where an instrument affects land in a part of Ontario subject to Part I, a statement of compliance with section 49 of the *Planning Act, 1983* by the person giving the instrument, together with the person's lawyer's statement that he or she has explained the effect of that section to the person, will be an acceptable alternative to the usual affidavit for *Planning Act* purposes. (These limited statements will suffice for registration but will not make the benefit of proposed subsection 49 (21a) of the *Planning Act, 1983* available. See explanatory note for section 21 of the Bill.)

Subsection 19. Self-explanatory.

Subsection 20. The amendment is intended to facilitate the ruling off of mortgages and instruments relating exclusively to them under subsections 51 (8) and (11) of the *Registry Act.*

Subsections 21 and 22. The amendments are complementary to the amendment to the law of mortgages made by section 6 of the Bill.

Subsection 23. An entry (a broader term than "memorandum", used in the existing section) will not be capable of being signed (as existing subsection 71 (2) requires) if it is made electronically. The broader concept of certification is used instead.

Subsection 24. A reference to the plan index book is deleted because that index will not necessarily be in book form where automated recording is in effect.

Subsection 25. Section 77 of the *Registry Act,* dealing with land registrars' compiled plans and new abstract indexes, is revised in a manner that takes account of current practice and will be compatible with Parts I and II.

Subsection 26. In certain circumstances county and district court judges are empowered to cancel plans of subdivision and direct how the affected lands are to be described. It would be inappropriate for this power to extend to altering property identifiers, which are the key for access to the automated parcel register.

Subsection 27. A reference to the fee and receiving book is deleted because a land registrar's fee and receiving record will not necessarily be in book form where automated recording is in effect.

Subsection 28. References to record books, the inspection of certain indexes and the compulsory retention of original documents are deleted.

Subsection 29. References to written alterations are deleted. Because tampering with electronic records is a serious and potentially disruptive offence, especially when committed on a large scale, a separate fine may be imposed for each record affected.

Subsections 30 and 31. Self-explanatory.

Subsections 32 and 33. The forms and property descriptions required for deposits relating to land in parts of Ontario subject to Part I will be somewhat different from existing requirements. Deposits as well as their duplicates are to be endorsed with certificates of deposit.

Subsection 34. Users of the automated index are entitled to rely on it.

SECTION 23. *Short Forms of Conveyances Act*

Conveyances of land in parts of Ontario subject to Part I will include the implied covenants found in section 5 of the Bill, making sections 1, 2, 3 and 4 of the *Short Forms of Conveyances Act* superfluous.

SECTION 24. *Short Forms of Mortgages Act*

Existing section 6 is, in effect, transferred to section 38a of the *Mortgages Act* (see explanatory note for subsection 20 (2) of the Bill).

Mortgages of land in parts of Ontario subject to Part I will include the implied covenants found in section 7 of the Bill, making sections 1, 2, 3, 4 and 5 of the *Short Forms of Mortgages Act* superfluous.

Bill 156 1983

An Act respecting Conveyancing Documents and Procedures and the Recording of Title to Real Property

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I

DOCUMENTS

1. In this Part, Interpretation

(a) "charge" means a charge on land given for the purpose of securing the payment of a debt or the perfor-

mance of an obligation, and includes a charge under the *Land Titles Act* and a mortgage, but does not include a rent charge;

R.S.O. 1980, c. 230

(b) "charge book" means the book maintained under subsection 8 (5);

(c) "chargee" means a person in whose favour a charge is given;

(d) "chargor" means a person who gives a charge;

(e) "Director" means the Director of Land Registration appointed under subsection 6 (1) of the *Registry Act;*

R.S.O. 1980, c. 445

(f) "discharge" means a discharge of a charge and includes a cessation of charge under the *Land Titles Act* and a certificate of discharge of mortgage under the *Registry Act*;

(g) "document" includes an instrument as defined in clause 1 (f) of the *Registry Act*;

(h) "land" means land, tenements, hereditaments and appurtenances and any estate or interest therein;

(i) "prescribed" means prescribed by the regulations;

(j) "regulations" means the regulations made under this Part;

(k) "successor" includes an executor, administrator, heir and assign;

(l) "transfer" means a conveyance of freehold or leasehold land and includes a deed and a transfer under the *Land Titles Act*, but does not include a lease or a charge;

(m) "transferee" means a person in whose favour a transfer is given;

(n) "transferor" means a person who gives a transfer.

Application of Part

2. This Part applies to documents affecting or relating to land in the parts of Ontario that are designated by regulation.

Form of documents

R.S.O. 1980, cc. 230, 445

3.—(1) A document shall not be registered under the *Land Titles Act* or the *Registry Act*, or deposited under Part II of the *Registry Act*, unless,

(a) its form and manner of execution comply with this Part and the regulations; or

(b) it is attached to a document whose form and manner of execution comply with this Part and the regulations.

Transitional

(2) Despite subsection (1), a document that is executed before the day the land it affects or to which it relates is designated under clause 16 (a) may be registered under the *Registry Act* or the *Land Titles Act*, or deposited under Part II of the *Registry Act*, as if this Act had not been passed.

R.S.O. 1980, cc. 445, 230

Saving

(3) Failure to comply with subsection (1) does not, in itself, invalidate a document that has been registered under the *Land Titles Act* or the *Registry Act*, or deposited under Part II of the *Registry Act*, after the coming into force of this section.

Director may authorize registration or deposit

(4) The Director may authorize the registration under the *Land Titles Act* or the *Registry Act*, or the deposit under Part II of the *Registry Act*, of a document whose form or manner of execution does not comply with this Part and the regulations.

Judge may order registration or deposit

(5) A judge of the District Court may, on an application made on notice to the Director, order that a document whose form or manner of execution does not comply with this Part and the regulations be registered under the *Land Titles Act* or the *Registry Act*, or deposited under Part II of the *Registry Act*.

Appeal

(6) A judge's order or refusal to make an order under subsection (5) may be appealed to the Divisional Court by the applicant or by the Director.

Incorporation of schedules

4.—(1) A document attached as a schedule to a document whose form is prescribed shall be deemed to be part of the document whose form is prescribed.

Prescribed form governs

(2) Where there is a conflict between the contents of a document whose form is prescribed and the contents of a document attached to it as a schedule, the document whose form is prescribed prevails.

Transfer: implied covenants

5.—(1) A transfer in the prescribed form shall be deemed to include the following covenants and release by the transferor, for the transferor and the transferor's successors, to and with the transferee and persons deriving title under the transferee:

Usual covenants and release

1. In a transfer of freehold or leasehold land by the beneficial owner for valuable consideration, unless the transfer is expressed to be a quitclaim:

i. That the transferor has the right to convey the land to the transferee.

ii. That the transferee shall have quiet enjoyment of the land.

iii. That the transferor or the transferor's successors will execute, at the transferee's expense, such further assurances of the land as may be reasonably required.

iv. That the transferor has not done, omitted or permitted any act to encumber the land, except as the records of the land registry office disclose.

v. That the transferor releases to the transferee all the transferor's existing claims on the land, except as the transfer provides and the records of the land registry office disclose.

Covenant re leasehold

2. In a transfer of leasehold land by the beneficial owner for valuable consideration:

That, despite anything done, omitted or permitted by the transferor, the lease or grant creating the term or estate for which the land is transferred is, at the time the transfer is given, a valid lease or grant of the property conveyed, in full force, unforfeited and unsurrendered, and that there is no subsisting default in the payment of the rents reserved by or in the performance of the covenants, conditions and agreements contained in the lease or grant at the time the transfer is given.

Covenants and release by trustee, etc.

3. In a transfer of freehold or leasehold land by a transferor who transfers as trustee or chargee, as personal representative of a deceased person, as committee of a mentally incompetent person, or under a court order:

i. That the transferor has not done, omitted or permitted anything whereby the land or any part thereof is or may be encumbered, or whereby the transferor is hindered from trans-

ferring the land or any part thereof as the transfer provides.

ii. That the transferor or the transferor's successors will execute, at the transferee's expense, such further assurances of the land as may be reasonably required.

iii. That the transferor releases to the transferee all the transferor's existing claims on the land, except as the transfer provides and the records of the land registry office disclose.

Settlor's covenant for further assurances

4. In a transfer of freehold or leasehold land by way of settlement by a transferor who transfers as settlor:

That the transferor and the transferor's successor will execute, at the expense of any person deriving title under the transfer, such further assurances of the land as may be reasonably required.

Multiple parties

(2) Where a transfer to which subsection (1) applies is given by or to more than one person, the covenants deemed to be included by that subsection are made,

(a) by each transferor to the extent of the interest or share transferred by the transferor; and

(b) with the transferees jointly, if the transfer is made to them jointly, or with each transferee, if the transfer is made to them as tenants in common.

Amendment of implied covenants

(3) A covenant deemed to be included in a transfer by subsection (1) may, in a schedule to the transfer, be expressly excluded or may be varied by setting out the covenant, appropriately amended.

Covenant by beneficial owner directing transfer

(4) Where a transfer to which subsection (1) applies is given at the direction of the beneficial owner, the transfer shall be deemed to include the appropriate covenants set out in subsection (1) on the part of the beneficial owner as if the beneficial owner were the transferor.

Enforcement of covenant

(5) The benefit of a covenant deemed to be included in a transfer by subsection (1) runs with the interest of the transferee in the land transferred, and may be enforced by any person in whom the interest or part thereof vests.

Charge not a transfer

6.—(1) A charge does not operate as a transfer of the legal estate in the land to the chargee.

Defeasance

(2) A charge ceases to operate when the money and interest secured by the charge are paid, or the obligation whose performance is secured by the charge is performed, in the manner provided by the charge.

Rights and remedies preserved

(3) Despite subsection (1), a chargor and chargee are entitled to all the legal and equitable rights and remedies that would be available to them if the chargor had transferred the land to the chargee by way of mortgage, subject to a proviso for redemption.

Charge: implied covenants

7.—(1) A charge in the prescribed form shall be deemed to include the following covenants by the chargor, for the chargor and persons deriving title under the chargor, with the chargee and the chargee's successors:

Usual covenants

1. In a charge of freehold or leasehold land by the beneficial owner:

   i. That the chargor or persons deriving title under the chargor will pay, in the manner provided by the charge, the money and interest it secures, and will pay the taxes assessed against the land.

   ii. That the chargor has the right to give the charge.

   iii. That the chargor has not done, omitted or permitted any act to encumber the land, except as the records of the land registry office disclose.

   iv. That the chargor or persons deriving title under the chargor will insure the buildings on the land as specified in the charge.

   v. That the chargee or the chargee's successors on default of payment for the number of days specified in the charge or in the *Mortgages Act*, whichever is longer, may on giving the notice specified in the charge or required by that Act, whichever is longer, enter on and take possession of, receive the rents and profits of, lease or sell the land.

R.S.O. 1980, c. 296

vi. That the chargor or persons deriving title under the chargor will, on default, execute at the chargee's expense such assurances of the land as may be reasonably required.

vii. That the chargee or the chargee's successors may distrain for arrears of interest.

viii. That on default of payment of the interest secured by the charge, the principal money shall, at the option of the chargee or the chargee's successors, become payable.

Covenant re freehold

2. In a charge of freehold land by the beneficial owner, that the chargor has a good title in fee simple to the land, except as the records of the land registry office disclose.

Covenant re leasehold

3. In a charge of leasehold land by the beneficial owner:

i. That, despite anything done, omitted or permitted by the chargor, the lease or grant creating the term or estate for which the land is held is, at the time the charge is given, a valid lease or grant of the land charged, in full force, unforfeited and unsurrendered, and that there is no subsisting default in the payment of the rents reserved by or in the performance of the covenants, conditions and agreements contained in the lease or grant at the time the charge is given.

ii. That the chargor or persons deriving title under the chargor will, while the moneys secured by the charge remain unpaid, pay, observe and perform all the rents reserved by and all the covenants, conditions and agreements contained in the lease or grant and will indemnify the chargee and the chargee's successors against all costs and damages incurred by reason of any non-payment of rent or non-observance or non-performance of the covenants, conditions and agreements.

Multiple parties

(2) Where a charge to which subsection (1) applies is given by or to more than one person, the covenants deemed to be included by that subsection are made,

(a) by the chargors jointly and severally, unless the charge specifies otherwise; and

(b) with the chargees jointly, unless the moneys secured are expressly secured to them in several shares or distinct sums.

Amendment of implied covenants

(3) A covenant deemed to be included in a charge by subsection (1) may, in a schedule to the charge, or in a set of standard charge terms filed under subsection 8 (1) and referred to in the charge by its filing number, be expressly excluded or may be varied by setting out the covenant, appropriately amended.

Enforcement of covenant

(4) A covenant deemed to be included in a charge by subsection (1) may be enforced by a successor of the chargee.

Prescribed terms

(5) A charge in the prescribed form shall be deemed to include such standard charge terms as are prescribed, unless,

(a) the prescribed standard charge terms are expressly excluded in the charge; or

(b) a set of standard charge terms filed under subsection 8 (1) is referred to in the charge by its filing number.

Filing of standard charge terms

8.—(1) A person may file with the Director, in the prescribed manner and form, a set of standard charge terms and, with the consent of the Director, may file a set of standard charge terms in a form other than the prescribed form.

Amendment of set of standard charge terms

(2) A set of standard charge terms filed under subsection (1) may be amended by filing a further set of standard charge terms under subsection (1).

Duties of Director

(3) Where a set of standard charge terms is filed under subsection (1), the Director shall,

(a) assign a filing number to the set and advise the person who filed the set of its filing number; and

(b) ensure that copies of the set, identified by its filing number, are provided to the land registry offices for the parts of Ontario designated under this Part within thirty days of the day on which the set was filed.

Public inspection

(4) Every set of standard charge terms filed under subsection (1) shall be made available in the prescribed manner and at the prescribed fee for public inspection and copying in the land registry offices for the parts of Ontario designated under this Part

on a day not later than thirty days after the day on which the set is filed with the Director.

Annual charge book

(5) The Director shall enter all sets of standard charge terms filed under subsection (1) during each calendar year in a charge book and shall as soon as possible after the end of the calendar year,

(a) provide copies of the charge book to the land registry offices for the parts of Ontario designated under this Part; and

(b) make available copies of the charge book for purchase by the public at the prescribed fee.

Effect of filing: incorporation by reference

9.—(1) A charge shall be deemed to include a set of standard charge terms filed under subsection 8 (1) if the set is referred to in the charge by its filing number.

Amendment of standard charge terms in individual charge

(2) A term deemed to be included in a charge by subsection (1) may, in a schedule to the charge, be expressly excluded or may be varied by setting out the term, appropriately amended.

Only one set to be incorporated by reference

(3) Where a charge refers to more than one set of standard charge terms by their filing numbers, the charge shall be deemed to include only the set that was filed last.

Express term governs

(4) Where there is a conflict between an express term in a charge and a term deemed to be included in the charge by subsection (1), the express term prevails.

When charge may be registered

10.—(1) A charge that refers to a set of standard charge terms filed under subsection 8 (1) by the set's filing number shall not be registered before a copy of the set is available in the land registry office where the charge is to be registered, as described in subsection 8 (4).

Saving

(2) The fact that a charge is registered in a manner that contravenes subsection (1) does not, in itself, invalidate the registered charge.

Disclosure: offence

11. A person named as chargee in a charge containing standard charge terms that have been filed under subsection 8 (1) who takes the charge before providing the chargor or the chargor's solicitor with a copy of the standard charge terms is guilty of an offence and on conviction is liable to a fine of not more than $5,000.

Director may require filing

12.—(1) Where the Director is satisfied that a charge presented for registration contains terms that should be filed

under subsection 8 (1) because of the frequency of their use in charges in favour of the chargee, the Director may give the chargee notice in the prescribed form and manner that on and after a day specified by the Director no charge in favour of the chargee that includes the terms shall be registered without the Director's authorization, unless the terms have been filed under subsection 8 (1) and a copy of the set of standard charge terms is available in the land registry office where the charge is to be registered, as described in subsection 8 (4).

Day to be specified

(2) The day specified by the Director in a notice given under subsection (1) shall be a day at least 120 days after the date of the notice.

No registration where filing required

(3) Where the Director has given a notice under subsection (1), no charge in favour of the chargee that includes the terms shall be registered without the Director's authorization on or after the day specified by the Director unless the terms have been filed under subsection 8 (1) and a copy of the set of standard charge terms is available in the land registry office where the charge is to be registered, as described in subsection 8 (4).

Director may require reference to filed set

(4) Where the Director is satisfied that a charge presented for registration contains terms that have been filed under subsection 8 (1) and that should not be set out expressly, because of the frequency of their use, the Director may give the chargee notice in the prescribed form and manner that on and after a day specified by the Director no charge in favour of the chargee that sets out the terms expressly shall be registered without the Director's authorization.

No registration where reference required

(5) Where the Director has given a notice under subsection (4), no charge in favour of the chargee that sets out the terms expressly shall be registered without the Director's authorization on or after the day specified by the Director.

Statement of transferor or chargor and solicitor

13. Where a transferor or chargor is represented by a solicitor, the transfer or charge shall not be registered unless it contains,

R.S.O. 1980, c. 152

(a) the transferor's or chargor's statement under subsection 42 (3) of the *Family Law Reform Act*; and

1983, c. 1

(b) the solicitor's statement that he or she has explained the effect of section 49 of the *Planning Act, 1983* to the transferor or chargor,

in the prescribed form.

14.—(1) Despite any statute or rule of law, a transfer, charge or discharge need not be executed under seal by any person, and a transfer, charge or discharge that is not executed under seal has the same effect for all purposes as if executed under seal. Seal not required

(2) Subsection (1) applies to a guarantee in a charge. Guarantee

15. The Lieutenant Governor in Council may make regulations, Regulations

(a) designating parts of Ontario for the purpose of section 2;

(b) prescribing forms for transfers, charges, discharges and other documents to be registered under the *Land Titles Act* or the *Registry Act*, or deposited under Part II of the *Registry Act*, and prescribing the manner of their execution by individuals and corporations; R.S.O. 1980, cc. 230, 445

(c) prescribing standard charge terms for the purpose of subsection 7 (5);

(d) prescribing the manner in which standard charge terms are to be filed with the Director under subsection 8 (1) and are to be made available for public inspection and copying;

(e) prescribing fees payable under subsections 8 (4) and (5);

(f) prescribing the form and manner in which notice is to be given under section 12;

(g) prescribing the form and manner in which statements in documents are to be made;

(h) prescribing the manner in which a party to a document registered under the *Land Titles Act* or the *Registry Act* may notify the land registrar of changes in the party's address for service.

PART II

AUTOMATED RECORDING AND PROPERTY MAPPING

16. Where land is designated for the purposes of Part I, the Lieutenant Governor in Council may by regulation designate all or any part of the land for the purpose of implement- Automated recording and property mapping in designated areas

ing a system for automated information recording and retrieval and property mapping.

PART III

AMENDMENTS TO STATUTE LAW

R.S.O. 1980, c. 90, s. 6, re-enacted

17.—(1) Section 6 of the *Conveyancing and Law of Property Act*, being chapter 90 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Statement of consideration

6. A statement of consideration money or other consideration in the body of a conveyance is a sufficient discharge to the person paying or delivering the conveyance without any receipt being endorsed on it.

s. 7, re-enacted

(2) Section 7 of the said Act is repealed and the following substituted therefor:

Statement as evidence for subsequent purchaser

7. A statement of consideration money or other consideration in the body of a conveyance or endorsed thereon is, in favour of a subsequent purchaser not having notice that the money or other consideration was not in fact paid or given wholly or in part, sufficient evidence of the payment or giving of the whole amount thereof.

s. 23, amended

(3) Section 23 of the said Act is amended by adding thereto the following subsection:

Exception

1983, c. . . .

(5) Subsections (1), (2), (3) and (4) do not apply to conveyances of land in the parts of Ontario designated under Part I of the *Land Registration Reform Act, 1983* that are executed on or after the day on which the land is designated under clause 15 (a) of that Act.

R.S.O. 1980, c. 152, s. 42 (3), re-enacted

18.—(1) Subsection 42 (3) of the *Family Law Reform Act*, being chapter 152 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Proof that property not a matrimonial home

1983, c. . . .

(3) For the purpose of subsection (2), an affidavit of the person making the disposition or encumbrance, or, where the property is located in a part of Ontario designated under Part I of the *Land Registration Reform Act, 1983*, a statement by the person,

(a) verifying that he or she is not, or was not, a spouse at the time of the disposition or encumbrance;

(b) verifying that the property has never been occupied by the person and his or her spouse as their matrimonial home;

(c) where the property is not designated under section 41, verifying that an instrument designating another property as a matrimonial home of the person and his or her spouse is registered under section 44 and not cancelled; or

(d) verifying that the other spouse has released all rights under this Part by a separation agreement,

shall, unless the person to whom the disposition or encumbrance is made had actual notice to the contrary, be deemed to be sufficient proof that the property is not a matrimonial home.

s. 45 (1) (f), re-enacted

(2) Clause 45 (1) (f) of the said Act is repealed and the following substituted therefor:

(f) where a false affidavit is given or a false statement is made under subsection 42 (3), direct,

(i) the person who swore the false affidavit or made the false statement, or

(ii) any person who knew at the time it was sworn or made that the affidavit or statement was false and who thereafter conveyed the property,

to substitute other real property for the matrimonial home or direct such person to set aside money or security to stand in place thereof subject to such terms and conditions as the court considers appropriate.

R.S.O. 1980, c. 230, s. 1, amended

19.—(1) Section 1 of the *Land Titles Act*, being chapter 230 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clauses:

(aa) "facsimile" means an accurate reproduction of a book, document or record and includes a print from microfilm and a printed copy generated by or produced from a computer record;

(ab) "land" means land, tenements, hereditaments and appurtenances and any interest therein;

. . . . .

(ga) "property" means land designated as a property under subsection 141a (2);

s. 7, re-enacted

(2) Section 7 of the said Act is repealed and the following substituted therefor:

Fee and receiving record

7. Upon receiving an instrument for registration or deposit, the land registrar shall record it and the fee charged in a manner approved by the Director of Land Registration.

s. 59, amended

(3) Section 59 of the said Act is amended by adding thereto the following subsection:

Payment re surveys for property mapping

(3a) The Director of Land Registration may direct that all or part of the costs of a survey of land required to facilitate the inclusion of the land in a property map referred to in subsection 141a (3) be paid out of The Land Titles Survey Fund.

s. 60, amended

(4) Section 60 of the said Act is amended by adding thereto the following subsection:

Reliance on automated index 1983, c. . . .

(4a) A person who suffers damage because of an error in recording an instrument affecting land designated under Part II of the *Land Registration Reform Act, 1983* in the abstract index is entitled to compensation from The Land Titles Assurance Fund.

s. 70, re-enacted

(5) Section 70 of the said Act is repealed and the following substituted therefor:

Description of registered owner

70. Subject to section 67, no person, other than a corporation, may be shown as the registered owner of land or a charge unless the person is described by surname and by the first given name in full, followed by another given name, if any, in full.

s. 75 (1), amended

(6) Subsection 75 (1) of the said Act is amended by striking out "books" in the fourth line and inserting in lieu thereof "records".

s. 75 (2), amended

(7) Subsection 75 (2) of the said Act is amended by striking out "book" in the second line and inserting in lieu thereof "record".

s. 81 (3), re-enacted

(8) Subsection 81 (3) of the said Act is repealed and the following substituted therefor:

When registration complete

(3) Registration of an instrument is complete when the instrument and its entry in the proper register are certified in the prescribed manner by the land registrar, deputy or assistant

deputy land registrar, and the time of receipt of the instrument shall be deemed to be the time of its registration.

(9) Section 82 of the said Act is amended by adding thereto the following subsection: s. 82, amended

(2) Subsection (1) does not apply to a charge or transfer of registered land in a part of Ontario designated under Part I of the *Land Registration Reform Act, 1983*. Exception 1983, c. . . .

(10) Section 93 of the said Act is amended by adding thereto the following subsection: s. 93, amended

(5a) The authorization mentioned in subsection (5) is not required where the instrument is to be registered as a charge against land in a part of Ontario designated under Part I of the *Land Registration Reform Act, 1983*. Exception 1983, c. . . .

(11) The said Act is amended by adding thereto the following section: s. 97a, enacted

97a. Sections 94, 95, 96 and 97 do not apply to a charge of registered land in the parts of Ontario designated under Part I of the *Land Registration Reform Act, 1983* that is executed on or after the day on which the land is designated under clause 15 (a) of that Act. Exception 1983, c. . . .

(12) Section 109 of the said Act is amended by adding thereto the following subsection: s. 109, amended

(2) Subsection (1) does not apply to a transfer of registered leasehold land in a part of Ontario designated under Part I of the *Land Registration Reform Act, 1983* that is executed on or after the day on which the land is designated under clause 15 (a) of that Act. Exception 1983, c. . . .

(13) The said Act is further amended by adding thereto the following sections: ss. 141a, 141b, enacted

141a.—(1) This section applies only to land in the parts of Ontario designated under Part II of the *Land Registration Reform Act, 1983*. Application 1983, c. . . .

(2) The Director of Land Registration shall divide into properties in the prescribed manner any land that is designated under Part II of the *Land Registration Reform Act, 1983* and assign property identifiers to properties in the prescribed manner. Properties and property identifiers

Property maps

(3) The Director of Land Registration shall, in the prescribed manner, maintain property maps showing all properties.

Parcel register

(4) The land registrar shall, in the prescribed manner, maintain an index in automated form known as the parcel register and enter every instrument that mentions a property identifier in the parcel register under that property identifier.

Other indexes and records

(5) The land registrar shall maintain such other indexes and records as are prescribed.

Entry of earlier instruments

(6) The Director of Land Registration may direct the land registrar to enter all instruments that were registered before the day this section comes into force, and that belong to a category or were registered during a period specified by the Director of Land Registration, in the parcel register under the property identifiers for the properties affected by the instruments.

Application 1983, c. . . .

141b.—(1) This section applies only to documents affecting land in the parts of Ontario designated under Part I of the *Land Registration Reform Act, 1983*.

Brief description and property identifier, etc.

(2) A document shall not be registered unless it contains,

(a) a reference to the parcel number, if any, of the land it affects;

(b) a reference to the lot, part lot or other unit on the plan or concession it affects;

(c) where the document deals with part of a property or part of a parcel, a registrable description of the land it affects; and

(d) the property identifier, if any, assigned under subsection 141a (2) to the property it affects.

Exceptions

(3) Subsection (2) does not apply to an instrument that is,

(a) a plan; or

(b) one of a prescribed class of instruments.

Idem

(4) Clauses (2) (b) and (c) do not apply to an instrument that is a discharge of charge purporting to discharge a charge completely.

s. 147, amended

(14) Section 147 of the said Act is amended by adding thereto the following subsection:

(2) Subsection (1) does not apply to land in the parts of Ontario designated under Part II of the *Land Registration Reform Act, 1983*. Exception 1983, c. . . .

(15) Section 162 of the said Act is amended by adding thereto the following subsection: s. 162, amended

(1a) The Lieutenant Governor in Council may make regulations, Idem

(a) prescribing the manner in which instruments and entries in the register are to be certified at registration;

(b) prescribing the manner in which instruments, books, public records and facsimiles thereof are to be produced for inspection;

(c) prescribing the manner in which copies of instruments, books and public records are to be produced and certified;

(d) prescribing methods and standards for computer entry, storage and retrieval of information;

(e) prescribing the manner in which land may be divided into properties;

(f) prescribing the manner in which property maps and parcel registers are to be maintained and property identifiers are to be assigned;

(g) prescribing classes of instruments for the purpose of clause 141b (3) (b);

(h) requiring that printed copies of the parcel register relating to land in the parts of Ontario designated under Part II of the *Land Registration Reform Act, 1983* be produced at prescribed times and prescribing the times at which they are to be produced. 1983, c. . . .

(16) Subsection 162 (2) of the said Act is repealed and the following substituted therefor: s. 162 (2), re-enacted

(2) The application of any provision of the regulations made under subsection (1) or (1a) may be limited to one or more land titles divisions or one or more part or parts of a land titles division or divisions. Application of regulations

s. 164, amended

(17) Section 164 of the said Act is amended by adding thereto the following subsections:

Exception 1983, c.. . .

(3) Subsection (2) does not apply in the parts of Ontario designated under Part I of the *Land Registration Reform Act, 1983*.

Production of instruments, copies, etc.

(4) Where land is in a part of Ontario designated under Part I of the *Land Registration Reform Act, 1983*, the land registrar shall, upon receipt of a written request and the prescribed fee,

(a) produce for inspection in the office during office hours,

(i) any instrument relating to the land that is registered in the office, or a facsimile of the instrument, or

(ii) any book or public record of the office relating to the land, or a facsimile of the book or public record;

(b) supply a copy of the whole or a part of,

(i) any instrument relating to the land that is registered in the office, or a facsimile of the instrument, or

(ii) any book or public record of the office relating to the land, or a facsimile of the book or public record; and

(c) certify any copy supplied under clause (b),

in the prescribed manner.

s. 164a, enacted

(18) The said Act is further amended by adding thereto the following section:

Computer printout, etc., admissible in evidence

164a.—(1) Where a registered instrument or a written record of a land registry office is recorded electronically or on a magnetic medium, any writing that,

(a) represents the registered instrument or written record;

(b) is generated by or produced from the electronic record or magnetic medium; and

(c) is in a readily understandable form,

is admissible in evidence to the same extent as the original registered instrument or written record.

Idem

(2) Where a record of a land registry office is recorded electronically or on a magnetic medium and there is no original written record that corresponds to the record, any writing that,

(a) represents the record;

(b) is generated by or produced from the electronic record or magnetic medium; and

(c) is in a readily understandable form,

is admissible in evidence to the same extent as the record would be if it were an original written record.

s. 165 (1), re-enacted

(19) Subsection 165 (1) of the said Act is repealed and the following substituted therefor:

Penalty for altering or removing records

(1) Any person, except the land registrar or other officer when entitled by law so to do, who alters any book, record, plan or registered instrument, or by any means or in any way adds to or takes from the contents of any book, record, plan or instrument, and any person who, without lawful authority, removes or attempts to remove any book, record, plan or instrument from the place where it is kept is guilty of an offence and on conviction is liable to a fine of not more than $5,000 for each book, record, plan or instrument that the person alters, removes or attempts to remove.

s. 166, amended

(20) Section 166 of the said Act is amended by adding thereto the following subsection:

Exception

(5) Subsections (1), (2), (3) and (4) do not apply to an instrument affecting land in a part of Ontario designated under Part I of the *Land Registration Reform Act, 1983*. 1983, c. . . .

R.S.O. 1980, c. 296, s. 8a, enacted

20.—(1) The *Mortgages Act*, being chapter 296 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

Exception

8a. Sections 7 and 8 do not apply to a mortgage of land in a part of Ontario designated under Part I of the *Land Registration Reform Act, 1983* that is executed on or after the day on which the land is designated under clause 15 (a) of that Act. 1983, c. . . .

s. 38a, enacted

(2) The said Act is further amended by adding thereto the following section:

Transitional provision

38a. Where a mortgage made before the 1st day of January, 1965, contains a power of sale in accordance with *The Short Forms of Mortgages Act*, being chapter 374 of the Revised Statutes of Ontario, 1960, a sale made under such power of sale, so long as it complies with this Part, is as effectual as if *The Short Forms of Mortgages Amendment Act, 1964* had not been passed.

1964, c. 110

1983, c. 1, s. 49, amended

21. Section 49 of the *Planning Act, 1983*, being chapter 1, is amended by adding thereto the following subsections:

Exception re prescribed statements

(21a) Where a deed or transfer,

(a) contains a statement by the grantor, verifying that to the best of his or her knowledge and belief the deed or transfer does not contravene this section;

(b) contains a statement by the grantor's solicitor, verifying that,

(i) he or she has explained the effect of this section to the grantor,

(ii) he or she has made inquiries of the grantor to determine that the deed or transfer does not contravene this section,

(iii) based on the information supplied by the grantor, to the best of the solicitor's knowledge and belief, the deed or transfer does not contravene this section, and

(iv) he or she is an Ontario solicitor in good standing; and

(c) contains a statement by the grantee's solicitor, verifying that,

(i) he or she has investigated the title to the land and, where relevant, to abutting land,

(ii) he or she is satisfied that the record of title to the land and, where relevant, to abutting land, reveals no existing contravention of this section or a predecessor thereof or of a by-law passed under a predecessor of this section or of an order made under clause 27 (1) (b), as it existed on the 25th day of June, 1970, of *The Planning Act*, being chapter 296 of the Revised Statutes of Ontario, 1960, or a predecessor

thereof, that has the effect of preventing the conveyance of any interest in the land,

(iii) to the best of his or her knowledge and belief, the deed or transfer does not contravene this section, and

(iv) he or she acts independently of the grantor's solicitor and is an Ontario solicitor in good standing; and

(d) is registered under the *Land Titles Act* or the *Registry Act*, R.S.O. 1980, cc. 230, 445

any contravention of this section or a predecessor thereof or of a by-law passed under a predecessor of this section or of an order made under clause 27 (1) (b), as it existed on the 25th day of June, 1970, of *The Planning Act*, being chapter 296 of the Revised Statutes of Ontario, 1960, or a predecessor thereof, does not and shall be deemed never to have had the effect of preventing the conveyance of any interest in the land, provided this subsection does not affect the rights acquired by any person from a judgment or order of any court given or made on or before the day the deed or transfer is registered.

Search period re *Planning Act, 1983*

(21b) For the purposes of the statement referred to in subclause (21a) (c) (ii), a solicitor is not required to investigate the registered title to the land except with respect to the time since the registration of the most recent deed or transfer affecting the same land and containing the statements referred to in clauses (21a) (a), (b) and (c).

Exempting orders

(21c) The Minister may by order designate any part of Ontario as land to which subsection (21a) shall not apply after the day a certified copy or duplicate of the order is registered in the proper land registry office in a manner approved by the Director of Land Registration appointed under the *Registry Act*.

Offence

(21d) Every person who knowingly makes a false statement under subsection (21a) is guilty of an offence and on conviction is liable to a fine not exceeding the aggregate of the value of,

(a) the land in respect of which the statement is made; and

(b) the relevant abutting land,

determined as of the day of registration of the deed or transfer containing the false statement.

R.S.O. 1980, c. 445, s. 1, amended

22.—(1) Section 1 of the *Registry Act*, being chapter 445 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clauses:

(ea) "facsimile" means an accurate reproduction of a book, instrument, document or record and includes a print from microfilm and a printed copy generated by or produced from a computer record;

. . . . .

(oa) "property" means land designated as a property under subsection 20a (2).

s. 16, amended

(2) Section 16 of the said Act is amended by adding thereto the following subsections:

Exception 1983, c. . . .

(3) Subsections (1) and (2) do not apply in the parts of Ontario that are designated under Part I of the *Land Registration Reform Act, 1983*.

Production of instruments, copies, etc.

(4) Where land is in a part of Ontario designated under Part I of the *Land Registration Reform Act, 1983*, the land registrar shall, upon receipt of a written request and the prescribed fee,

(a) produce for inspection in the office during office hours,

(i) any instrument or document relating to the land that is registered or deposited in the office, or a facsimile of the instrument or document, or

(ii) any book or public record of the office relating to the land, or a facsimile of the book or public record;

(b) supply a copy of the whole or a part of,

(i) any instrument or document relating to the land that is registered or deposited in the office, or a facsimile of the instrument or document, or

(ii) any book or public record of the office relating to the land, or a facsimile of the book or public record; and

(c) certify any copy supplied under clause (b),

in the prescribed manner.

(3) The said Act is amended by adding thereto the following section: s. 16a, enacted

16a.—(1) Where a registered instrument, a document deposited under Part II or a written record of a land registry office is recorded electronically or on a magnetic medium, any writing that, Computer printout, etc., admissible in evidence

(a) represents the instrument, document or record;

(b) is generated by or produced from the electronic record or magnetic medium; and

(c) is in a readily understandable form,

is admissible in evidence to the same extent as the original instrument, document or record.

(2) Where a record of a land registry office is recorded electronically or on a magnetic medium and there is no original written record that corresponds to the record, any writing that, Idem

(a) represents the record;

(b) is generated by or produced from the electronic record or magnetic medium; and

(c) is in a readily understandable form,

is admissible in evidence to the same extent as the record would be if it were an original written record.

(4) Section 17 of the said Act is amended by adding thereto the following subsection: s. 17, amended

(1a) Subsection (1) does not apply to an instrument or memorial affecting or relating to land in a part of Ontario designated under Part I of the *Land Registration Reform Act, 1983*. Exception 1983, c. . . .

(5) Clause 19 (2) (a) of the said Act is amended by striking out "manually or mechanically" in the second line. s. 19 (2) (a), amended

(6) Subsection 19 (4) of the said Act is amended by inserting after "book" in the fifth line "or a facsimile thereof". s. 19 (4), amended

(7) Subsection 19 (6) of the said Act is repealed and the following substituted therefor: s. 19 (6), re-enacted

Instruments to be included in copy of abstract index

(6) Where an abstract index is copied, every instrument, except an instrument to which subsection 62 (2), 51 (10) or 51 (11) applies, shall be copied, and the land registrar shall carefully preserve the original abstract index or a facsimile thereof and produce it upon demand.

s. 20, amended

(8) Section 20 of the said Act is amended by adding thereto the following subsection:

Exception 1983, c. . . .

(4) Subsections (1), (2) and (3) do not apply to land in the parts of Ontario designated under Part II of the *Land Registration Reform Act, 1983*.

s. 20a, enacted

(9) The said Act is further amended by adding thereto the following section:

Application 1983, c. . . .

20a.—(1) This section applies only to land in the parts of Ontario designated under Part II of the *Land Registration Reform Act, 1983*.

Properties and property identifiers

(2) The Director shall divide into properties in the prescribed manner any land that is designated under Part II of the *Land Registration Reform Act, 1983* and assign property identifiers to properties in the prescribed manner.

Property maps

(3) The Director shall, in the prescribed manner, maintain property maps showing all properties.

Abstract index

(4) The land registrar shall, in the prescribed manner, maintain an index in automated form known as the abstract index and enter every instrument that mentions a property identifier in the abstract index under that property identifier.

Other indexes and records

(5) The land registrar shall maintain such other indexes and records as are prescribed.

Entry of earlier instruments

(6) The Director may direct the land registrar to enter all instruments that were registered before the day this section comes into force, and that belong to a category or were registered during a period specified by the Director, in the abstract index under the property identifiers for the properties affected by the instruments.

s. 21 (1), re-enacted

(10) Subsection 21 (1) of the said Act is repealed and the following substituted therefor:

Instruments that may be registered

(1) Except as otherwise provided in and subject to,

(a) this Act and the regulations; and

(b) in respect of instruments affecting land in the parts of Ontario designated under Part I of the *Land Registration Reform Act, 1983*, Part I of that Act and the regulations made thereunder, 1983, c. . . .

any instrument within the meaning of clause 1 (f) and any other instrument specifically permitted to be registered under Part I of this Act may be registered.

(11) Section 22 of the said Act is amended by adding thereto the following subsection: s. 22, amended

(3) Subsections (1) and (2) do not apply to an instrument affecting land in a part of Ontario designated under Part I of the *Land Registration Reform Act, 1983*. Exception 1983, c. . . .

(12) The said Act is further amended by adding thereto the following section: s. 22a, enacted

22a.—(1) This section applies only to instruments affecting land in the parts of Ontario designated under Part I of the *Land Registration Reform Act, 1983*. Application 1983, c. . . .

(2) An instrument shall not be registered unless it contains, Brief description and property identifier, etc.

(a) a reference to the lot, part lot or other unit on the plan or concession it affects;

(b) a registrable description of the land it affects, unless a registrable description of the same land is already recorded in the abstract index; and

(c) the property identifier, if any, assigned under subsection 20a (2) to the property it affects.

(3) Subsection (2) does not apply to an instrument that is, Exceptions

(a) a plan;

(b) identified by the letters "G.R." and to be registered under subsection 18 (6);

(c) a by-law that does not directly affect title to land;

(d) presented for registration together with a declaration in the prescribed form made by a party to the instrument or by the party's solicitor, attorney under registered power of attorney, or heirs, executors or administrators, or, where the party is a corporation, by an officer thereof, stating that the instrument

affects land within the registry division, and containing the information required by subsection (2);

(e) a judgment or order of the court or of a judge, or a certificate or certified or notarial copy of such judgment or order, presented for registration together with a declaration in the prescribed form, made by one of the parties to the action or by the party's solicitor, stating that the instrument affects land within the registry division, and containing the information required by subsection (2); or

(f) one of a prescribed class of instruments.

Further recording

(4) A registered instrument may be recorded or further recorded in the abstract index upon the registration of a declaration in the prescribed form made by any of the persons mentioned in clauses (3) (d) and (e).

s. 25a, enacted

(13) The said Act is further amended by adding thereto the following section:

Exception re transferor's or chargor's and solicitor's statements 1983, c. . . .

25a. Sections 25 and 26 do not apply to an instrument that,

(a) affects land in a part of Ontario designated under Part I of the *Land Registration Reform Act, 1983*; and

(b) where the instrument is a transfer or charge as defined in that Act, complies with section 13 of that Act.

s. 32, amended

(14) Section 32 of the said Act is amended by adding thereto the following subsection:

Exception

1983, c. . . .

(3) Subsections (1) and (2) do not apply to an instrument affecting land in a part of Ontario designated under Part I of the *Land Registration Reform Act, 1983*.

s. 32a, enacted

(15) The said Act is further amended by adding thereto the following section:

Application

1983, c. . . .

32a.—(1) This section applies only to instruments affecting land in the parts of Ontario designated under Part I of the *Land Registration Reform Act, 1983*.

(2) The seal of a court of record affixed to an instrument is sufficient evidence, for the purpose of registration, of the due execution of the instrument by the judge or the officer of the court signing it. Seal of court with signature of officer to suffice for registration

(3) Where an instrument is executed by a corporation, Execution by corporation

(a) the corporation's seal affixed to the instrument, with the signature of an authorized person; or

(b) the signature of an authorized person, with the person's statement that he or she has authority to sign,

are sufficient evidence, for the purpose of registration, of the due execution of the instrument by the corporation.

(4) Where an attorney empowered under section 281 of the *Corporations Act*, the *Business Corporations Act, 1982* or section 22 of the *Corporations Act* (Canada) executes a transfer or charge as defined in the *Land Registration Reform Act, 1983* on behalf of a corporation and the transfer or charge does not comply with section 13 of that Act, subsection 25 (1) applies. Proof of execution by attorney for corporation R.S.O. 1980, c. 95; 1982, c. 4; R.S.C. 1970, c. C-32 1983, c. . .

(16) Section 37 of the said Act is amended by adding thereto the following subsection: **s. 37, amended**

(3) Subsections (1) and (2) do not apply to an instrument affecting land in a part of Ontario designated under Part I of the *Land Registration Reform Act, 1983*. Exception 1983, c. . . .

(17) Section 41 of the said Act is amended by adding thereto the following subsections: **s. 41, amended**

(12) Subsections (1), (2), (3), (4) and (10) do not apply to an instrument affecting land in a part of Ontario designated under Part I of the *Land Registration Reform Act, 1983*. Where subss.(1-4, 10), do not apply 1983, c. . . .

(13) The affidavit referred to in subsection (6) is not required where the instrument, Where affidavit of spousal status not required

(a) affects land in a part of Ontario designated under Part I of the *Land Registration Reform Act, 1983*; and

(b) contains the statement referred to in subsection 42 (3) of the *Family Law Reform Act*. R.S.O. 1980, c. 152

(14) The affidavit referred to in subsection (7) is not required where the instrument, Idem

1983, c. . . .

(a) affects land in a part of Ontario designated under Part I of the *Land Registration Reform Act, 1983*; and

(b) contains the person's statement that the other is his or her spouse, or both persons' statement that they are spouses of one another.

Statement by attorney

(15) Where an instrument is executed by an attorney, the attorney may make the statement referred to in clause (14) (b) on the person's behalf.

s. 42, amended

(18) Section 42 of the said Act is amended by adding thereto the following clause:

1983, c. . . .

(ba) the instrument is a transfer or charge as defined in the *Land Registration Reform Act, 1983*, affects land in a part of Ontario designated under Part I of that Act and contains the solicitor's statement referred to in section 13 of that Act and a statement by the party giving the instrument, verifying that to the best of the party's knowledge and belief the instrument does not contravene section 49 of the *Planning Act, 1983*.

1983, c. 1

s. 43 (2), re-enacted

(19) Subsection 43 (2) of the said Act is repealed and the following substituted therefor:

Description of grantee

(2) An instrument shall not be registered unless every grantee who is not a corporation is described by surname and by the first given name in full, followed by another given name, if any, in full.

Saving

(2a) Failure to comply with subsection (2) does not, in itself, invalidate a registered instrument.

s. 56 (3), re-enacted

(20) Subsection 56 (3) of the said Act is repealed and the following substituted therefor:

Contents

(3) The certificate shall mention the date of registration and the registration number of,

(a) each of the instruments or documents through which the person executing the certificate claims interest in and title to the mortgage money; and

(b) every other registered instrument relating exclusively to the mortgage.

s. 58, amended

(21) Section 58 of the said Act is amended by adding thereto the following subsections:

(2) Subsection (1) does not apply to a certificate of discharge affecting land in a part of Ontario designated under Part I of the *Land Registration Reform Act, 1983*. Exception 1983, c. . . .

(3) Where a mortgage affecting land in a part of Ontario designated under Part I of the *Land Registration Reform Act, 1983* and executed before the day the land is designated under clause 15 (a) of that Act is discharged, a certificate of discharge under this Act and the regulations that complies with Part I of that Act and the regulations made thereunder is, when registered, as valid and effectual as a conveyance to the mortgagor, his heirs or assigns of his original estate in the mortgaged land or in the part thereof described in the certificate, as the case may be. Effect of registration of discharge of mortgage predating

(22) Section 60 of the said Act is amended by adding thereto the following subsections: s. 60, amended

(4a) Subsection (4) does not apply to a certificate of discharge affecting land in a part of Ontario designated under Part I of the *Land Registration Reform Act, 1983*. Exception 1983, c. . . .

(4b) The certificate when registered, if it is of payment in full of a mortgage affecting land in a part of Ontario designated under Part I of the *Land Registration Reform Act, 1983* and executed before the day on which the land is designated under clause 15 (a) of that Act, is as valid and effectual in law as a release of the mortgage and as a conveyance to the mortgagor, his heirs, executors, administrators, or assigns, or any person lawfully claiming by, through or under him or them, of the original estate of the mortgagor as if executed by the execution debtor. Effect of certificate

(23) Subsection 71 (2) of the said Act, as amended by the Statutes of Ontario, 1981, chapter 17, section 3, is repealed and the following substituted therefor: s. 71 (2), re-enacted

(2) The land registrar shall, immediately after becoming aware of any omission or error in recording or deleting, make, date and certify in the prescribed manner such entries, alterations or corrections as are requisite. Method

(24) Section 76 of the said Act is amended by striking out "book" in the first line. s. 76, amended

(25) Section 77 of the said Act is repealed and the following substituted therefor: s. 77, re-enacted

77.—(1) Where and as the examiner of surveys directs, the land registrar, taking account of registered instruments and Land registrar's compiled plan

deposited plans, shall prepare and register a plan of an area designated by the examiner of surveys.

Idem

(2) A plan prepared and registered under subsection (1) shall be known as a Land Registrar's Compiled Plan.

New abstract index

(3) Where and as the Director directs, the land registrar, taking account of registered instruments and deposited plans, shall,

(a) divide an area designated by the Director into parcels for abstract purposes;

(b) create a new heading in the abstract index for each parcel; and

(c) record previously registered instruments and deposited documents affecting or relating to the designated area under the new headings.

Easements

(4) A parcel may include a reference to any easement in respect of which the land is the dominant or servient tenement.

s. 82 (1) (d), amended

(26) Clause 82 (1) (d) of the said Act is amended by adding at the end thereof "but shall not assign a property identifier to the lands or alter any property identifier that has been assigned under subsection 20a (2)".

s. 90, re-enacted

(27) Section 90 of the said Act is repealed and the following substituted therefor:

Record of fees, etc.

90. Upon receiving an instrument for registration or a document or plan for deposit, the land registrar shall record it and the fee charged in a manner approved by the Director.

s. 91 (b, g), re-enacted; s. 91 (e), repealed

(28) Clauses 91 (b), (e) and (g) of the said Act are repealed and the following substituted therefor:

records

(b) see that entries and registrations are made and certified in a proper manner, that the indexes and records are properly kept and that any original documents are properly stored;

. . . . .

instruction of land registrar

(g) direct the land registrar how and in what manner to do any particular act or amend or correct whatever the Director may find amiss.

(29) Subsection 95 (1) of the said Act is repealed and the following substituted therefor: s. 95 (1), re-enacted

(1) Any person, except the land registrar or other officer when entitled by law so to do, who alters any book, record, plan, registered instrument or deposited document or by any means or in any way adds to or takes from the contents of any book, record, plan, instrument or document, and any person who, without lawful authority, removes or attempts to remove any book, record, plan, instrument or document from the place where it is kept, is guilty of an offence and on conviction is liable to a fine of not more than $5,000 for each book, record, plan, instrument or document that the person alters, removes or attempts to remove. Penalty for altering or removing records

(30) Subsection 96 (1) of the said Act is amended by adding thereto the following clauses: s. 96 (1), amended

(ka) prescribing methods and standards for computer entry, storage and retrieval of information;

. . . . .

(pa) prescribing the manner in which entries are to be certified;

(pb) prescribing the manner in which instruments, documents, books, public records and facsimiles thereof are to be produced for inspection;

(pc) prescribing the manner in which copies of instruments, documents, books and public records are to be produced and certified;

(pd) prescribing the manner in which land may be divided into properties;

(pe) prescribing the manner in which property maps and indexes are to be maintained and property identifiers are to be assigned;

(pf) prescribing classes of instruments for the purpose of clause 22a (4) (e);

(pg) requiring that printed copies of the abstract index relating to land in the parts of Ontario designated under Part II of the *Land Registration Reform Act, 1983* be produced at prescribed times and prescribing the times at which they are to be produced. 1983, c. . . .

s. 96 (2), re-enacted

(31) Subsection 96 (2) of the said Act is repealed and the following substituted therefor:

Application of regulations

(2) The application of any provision of the regulations made under subsection (1) may be limited to one or more registry divisions or one or more part or parts of a registry division or divisions.

s.100, amended

(32) Section 100 of the said Act is amended by adding thereto the following subsections:

Exception 1983, c.. . .

(2) Subsection (1) does not apply to a deposit relating to land in a part of Ontario designated under Part I of the *Land Registration Reform Act, 1983*.

Requisition to be filed

(3) Upon every deposit relating to land in a part of Ontario designated under Part I of the *Land Registration Reform Act, 1983*, the person making the deposit shall deliver to the land registrar a requisition in the prescribed form containing a description of the land to which the deposit relates that complies with subsection 22a (2).

s. 101 (1), re-enacted

(33) Subsection 101 (1) of the said Act is repealed and the following substituted therefor:

Numbering, etc.

(1) Upon receiving a requisition under subsection 100 (1) and the documents therein mentioned, the land registrar shall cause the word "deposited" with the date and deposit number to be endorsed on the requisition.

Certificate of deposit

(1a) Upon receiving a requisition under subsection 100 (3), the land registrar shall cause a certificate of deposit in the prescribed form to be endorsed on the requisition and every duplicate thereof.

s. 108, amended

(34) Section 108 of the said Act , as enacted by the Statutes of Ontario, 1981, chapter 17, section 5, is amended by adding thereto the following subsection:

Reliance on automated index 1983, c.. . .

(3a) A person who suffers damage because of an error in recording an instrument affecting land designated under Part II of the *Land Registration Reform Act, 1983* in the abstract index is entitled to compensation from The Land Titles Compensation Fund, and subsection (2) does not apply to the person's right to compensation.

R.S.O. 1980, c. 472, amended

23. The *Short Forms of Conveyances Act*, being chapter 472 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

5. Sections 1, 2, 3 and 4 do not apply to a deed of land in a part of Ontario designated under Part I of the *Land Registration Reform Act, 1983* that is executed on or after the day the land is designated under clause 15 (a) of that Act. Where ss. 1-4 do not apply 1983, c. . . .

24. Section 6 of the *Short Forms of Mortgages Act*, being chapter 474 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor: **R.S.O. 1980, c. 474, s. 6, re-enacted**

6. Sections 1, 2, 3, 4 and 5 do not apply to a mortgage of land in a part of Ontario designated under Part I of the *Land Registration Reform Act, 1983* that is executed on or after the day the land is designated under clause 15 (a) of that Act. Where ss. 1-5 do not apply 1983, c. . . .

PART IV

GENERAL

25.—(1) This Act, except subsection 22 (25), comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

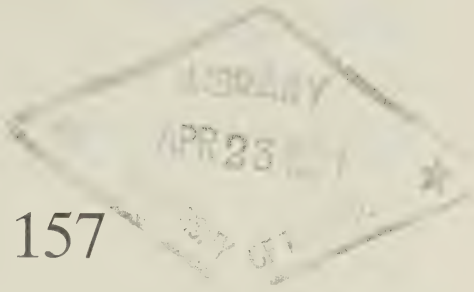
(2) Subsection 22 (25) of this Act shall be deemed to have come into force on the 1st day of December, 1983. Idem

26. The short title of this Act is the *Land Registration Reform Act, 1983*. Short title

Bill 157 Government Bill

Govern
Publica

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983



Bill 157

An Act to amend the Education Act

The Hon. B. Stephenson
Minister of Education and Minister of Colleges and Universities

1st Reading December 15th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTES

SECTION 1. The definition of "credit" is amended to include a reference to the Ontario secondary school diploma.

SECTION 2. The amendment corrects the reference to the *Workers' Compensation Act*.

SECTION 3. New section 8a is added to the Act to enable the Ministry to determine the disposition of financial assistance paid under the Act.

SECTION 4. Subsection 10 (8) of the Act authorizes the making of regulations. Clause (d) is re-enacted to remove the reference to documents "obtained outside Ontario".

SECTION 5. Subsection 15 (7) of the Act relates to inspection of private schools in respect of the standard of instruction. The subsection is amended to include a reference to the Ontario secondary school diploma.

SECTION 6. Subsection 126 (1) of the Act refers to "a prescribed form". The amendment clarifies the reference.

SECTION 7. Form 2 of Part IV of the Act relates to section 126 as it was before the section was re-enacted in 1981.

SECTION 8. Subsection 150 (1) of the Act sets out powers of boards. Paragraph 38 is re-enacted to state only the power to conduct an education program.

SECTION 9. Subsection 158 (1) of the Act relates to sick leave credits. The subsection is re-enacted so that the half-year maximum payment on termination of employment is computed on the basis of the full-time annual rate of the earnings received by the employee for the last school year in which the employee was employed by the board.

SECTION 10. The amendment adds to subsection 165 (3) of the Act a reference to subsection 165 (1a) which was enacted by the Statutes of Ontario, 1982, chapter 32, section 44.

SECTION 11. Subsection 170 (1) of the Act is re-enacted to clarify the right of a board to continue in possession of realty that was originally granted by the Crown for school purposes and that has reverted or may have reverted to the Crown although still in the possession of the board. The sale, lease or other disposition of the realty will continue to be subject to the approval of the Lieutenant Governor in Council.

SECTION 12. The amendment corrects an internal cross-reference.

SECTION 13. Section 215 of the Act relates to the duty of municipalities to levy, collect and pay over amounts to school boards. The due dates for instalments under the section are the 31st day of March, the 30th day of June, the 30th day of September and the 15th day of December.

New subsections 215 (9) and (10) require municipalities to deliver the instalments to the boards or deposit the instalments in the boards' bank accounts not later than the due dates.

SECTION 14. Section 230 of the Act relates to the employment of teachers. Subsection 230 (1) refers to permanent and probationary employment. Subsection 230 (2) refers to the form of the contract of employment. The term "teacher" is defined in paragraph 66 of subsection 1 (1) of the Act. New subsection 230 (3) restricts the meaning of the term for the purposes of section 230.

SECTION 15. Sections 250 and 251 of the Act require the appointment of a director of education where the school enrolment is 2,000 or more. Section 252 of the Act permits appointment of a supervisory officer, with the approval of the Minister, where school enrolment is less than 2,000. New section 252a prevents a board from abolishing such a position without the approval of the Minister.

SECTIONS 16-23. These sections contain amendments to Part XI (French Language Instruction) of the Act.

Section 16 contains amendments to section 258 of the Act related to elementary schools or classes. Subsection 258 (2) states the principle that every French-speaking person who is qualified to be a resident pupil of a board has the right to receive instruction in a French-language instructional unit. Subsection 258 (3) requires boards to provide instruction in French-language instructional units, either by establishing and operating one or more such units or by entering into an agreement with another board. Subsection 258 (3a) requires boards to provide meals, lodging and transportation to pupils required to travel more than twenty-four kilometres to a French-language instructional unit. Subsections 258 (5) and (6) provide for English as a subject of instruction in a French-language instructional unit. Subsection 258 (8) provides the reciprocal rights of an English-speaking person who is qualified to be a resident pupil of a board. Complementary amendments are made to subsections 258 (4) and (6) of the Act.

Section 17 of the Bill amends section 260 of the Act. Section 260 contains definitions of terms in sections in Part XI that relate to secondary schools. Clause 260 (a) defines the term "board" as used in sections 261 to 277 of the Act.

Section 18 of the Bill contains amendments to section 261 of the Act. These amendments are similar to new subsections 258 (2), (3) and (3a) as set out in the Bill.

Section 19 of the Bill re-enacts subsection 268 (1) of the Act which sets out the right of the chairman of a French-language advisory committee to attend meetings of committees of the board. The subsection is re-enacted to make it clear that the reference to a committee of the board includes a committee of the whole board.

Section 20 of the Bill repeals section 271 of the Act which requires that English be a subject of instruction in grades 9 to 12 in a French-language school.

Section 21 of the Bill amends subsection 272 (1) of the Act to provide the same rights to an English-speaking pupil in relation to secondary school education as are provided by subsection 258 (8) as set out in this Bill.

Sections 22 and 23 of the Bill relate to section 277 of the Act. That section provides for the settlement of differences between a board and a French-language advisory committee. Subsection 277 (1) requires the Languages of Instruction Commission, where mediation has failed to bring about an agreement, to consider the matter and recommend a course of action to the board. Subsection 277 (2) requires the board to report its decision in respect of the recommendation. This latter provision is expanded to require either a positive or negative resolution by the board, with notice to the Commission and, in the case of a negative resolution, to the Minister.

A board that makes a negative resolution is given the opportunity to reverse its decision (new section 277a).

The Commission is required to reconsider the matter if the board makes a negative resolution. The Commission must then report to the Minister with a recommendation and the Minister is required to consider the report and recommendation and make such order as the Minister considers appropriate. The order is enforceable as an order of the Supreme Court (new section 277b).

Bill 157 1983

An Act to amend the Education Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. **Subparagraph ii of paragraph 10a of subsection 1 (1) of the *Education Act*, being chapter 129 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1982, chapter 32, section 1, is repealed and the following substituted therefor:** s. 1 (1), par. 10a, subpar. ii, re-enacted

ii. is acceptable to the Minister as partial fulfilment of the requirements for the Ontario secondary school diploma, the secondary school graduation diploma or the secondary school honour graduation diploma, as the case may be.

2. **Clause 8 (1) (i) of the said Act, as re-enacted by the Statutes of Ontario, 1982, chapter 32, section 3, is amended by striking out "*Workmen's Compensation Act*" in the fourth line and inserting in lieu thereof "*Workers' Compensation Act*".** s. 8 (1) (i), amended

3. **The said Act is amended by adding thereto the following section:** s. 8a, enacted

8a. The Minister may require a person or organization that has received financial assistance under this Act or the regulations to submit to the Minister a statement prepared by a person licensed under the *Public Accountancy Act* that sets out the details of the disposition of the financial assistance by the person or organization. Accounting statement related to assistance by Ministry R.S.O. 1980, c. 405

4. **Clause 10 (8) (d) of the said Act is repealed and the following substituted therefor:** s. 10 (8) (d), re-enacted

(d) prescribing the conditions under which fees shall be paid to the Ministry for the evaluation of academic certificates, transcripts and other documents of edu- fees for evaluations

cational standing, and prescribing the amounts of the fees.

s. 15 (7), amended

5. Subsection 15 (7) of the said Act is amended by inserting after "to" where it occurs the first time in the fourth line "the Ontario secondary school diploma".

s. 126 (1), amended

6. Subsection 126 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 47, section 21, is amended by striking out "prescribed form" in the first line and inserting in lieu thereof "form prescribed by the regulations".

Part IV, Form 2, repealed

7. Form 2 of Part IV of the said Act is repealed.

s. 150 (1), par. 38, re-enacted

8. Paragraph 38 of subsection 150 (1) of the said Act is repealed and the following substituted therefor:

programs in detention homes

38. with the approval of the Minister, conduct an education program in a centre, facility, home, hospital or institution that is approved, designated, established, licensed or registered under any Act and in which the Ministry does not conduct an education program.

s. 158 (1), re-enacted

9. Subsection 158 (1) of the said Act is repealed and the following substituted therefor:

Sick leave credits

(1) A board, by resolution, may establish a system of sick leave credit gratuities for employees or any class thereof provided that on the termination of his employment no employee is entitled to more than an amount equal to his salary, wages or other remuneration for one-half the number of days standing to his credit and in any event not in excess of an amount equal to one-half of the full-time annual rate of the earnings received by the employee for the last school year in which the employee was employed by the board.

s. 165 (3), amended

10. Subsection 165 (3) of the said Act is amended by striking out "subsection (1) or (2)" in the first and second lines and inserting in lieu thereof "subsection (1), (1a) or (2)".

s. 170 (1), re-enacted

11. Subsection 170 (1) of the said Act is repealed and the following substituted therefor:

Disposal of realty

(1) A board that is in possession of real property that was originally granted by the Crown for school purposes and that has reverted or may have reverted to the Crown may continue in possession of the real property for school purposes and when the board determines that the real property is no longer required for school purposes, the board may, with the approval

of the Lieutenant Governor in Council and subject to such conditions as are prescribed by the Lieutenant Governor in Council, sell, lease or otherwise dispose of the real property.

12. Clause 182 (7) (c) of the said Act is amended by striking out "74 (4) (b)" in the third line and inserting in lieu thereof "74 (4) (a)". s. 182 (7) (c), amended

13. Section 215 of the said Act is amended by adding thereto the following subsections: s. 215, amended

(9) The council of each municipality shall cause each instalment that the council is required by subsections (1) to (8) to pay to a board to be delivered to the board or deposited in the board's bank account on or before but not later than the date on which the council is required by those subsections to pay the instalment. Transfer of payments

(10) In this section, "bank account", in relation to a board, means the account kept in a chartered bank of Canada in the name of the board and designated by the board for the purpose of this section. Interpretation

14. Section 230 of the said Act is amended by adding thereto the following subsection: s. 230, amended

(3) In this section, "teacher" means a teacher, Interpretation

(a) who is not employed as a supervisory officer; and

(b) who is assigned to perform duties or to a position for which only a teacher is qualified.

15. The said Act is further amended by adding thereto the following section: s. 252a, enacted

252a. A board that is required by this Act to employ a director of education in any year or that appoints a director of education or a supervisory officer with the approval of the Minister shall not abolish the position of director of education or supervisory officer, as the case may be, without the approval of the Minister. Abolition of position

16.—(1) Subsection 258 (1) of the said Act is repealed and the following substituted therefor: s. 258 (1), re-enacted

(1) In this section, Interpretation

(a) "board" means a board of education, public school board or separate school board;

(b) "French-language instructional unit" means a class, group of classes or school in which French is the language of instruction.

s. 258 (2), re-enacted

(2) Subsection 258 (2) of the said Act, as amended by the Statutes of Ontario, 1982, chapter 32, section 61, is repealed and the following substituted therefor:

Right to instruction in French-language instructional unit

(2) Every French-speaking person who is qualified under this Act to be a resident pupil of a board has the right to receive elementary school instruction in a French-language instructional unit operated or provided by the board.

s. 258 (3), re-enacted

(3) Subsection 258 (3) of the said Act is repealed and the following substituted therefor:

Duty of board to provide French-language instructional unit

(3) Every board that has one or more resident pupils who exercise their right to receive instruction in a French-language instructional unit shall establish and operate one or more French-language instructional units for those pupils or shall enter into an agreement with another board to enable those pupils to receive instruction in a French-language instructional unit operated by the other board.

Meals, lodging and transportation

(3a) A board that provides a French-language instructional unit for elementary school instruction by means of an agreement with another board shall provide to each French-speaking resident pupil of the first-mentioned board who is a pupil in the French-language instructional unit and resides with the parent or other person who has lawful custody of the pupil more than twenty-four kilometres from the French-language instructional unit,

(a) an allowance in an amount set by the board for meals and lodging for each day of attendance as certified by the principal in respect of the French-language instructional unit and for transportation once a week from the pupil's residence to the lodging and return; or

(b) daily transportation from the pupil's residence to the French-language instructional unit and return, where the parent or other person who has lawful custody of the pupil elects to have daily transportation.

s. 258 (4), amended

(4) Subsection 258 (4) of the said Act is amended by striking out "referred to in subsection (1)" in the first line.

s. 258 (5), re-enacted

(5) Subsection 258 (5) of the said Act is repealed and the following substituted therefor:

(5) English may be a subject of instruction in any grade in a French-language instructional unit mentioned in subsection (2). English as a subject of instruction

(5a) English shall be a subject of instruction in grades 5, 6, 7 and 8 in every French-language instructional unit. Idem, grades 5, 6, 7 and 8

(6) Subsection 258 (6) of the said Act is amended by striking out "class formed under subsection (1), (2) or (3) or to a school provided under subsection (4)" in the third and fourth lines and inserting in lieu thereof "French-language instructional unit". s. 258 (6), amended

(7) Subsection 258 (8) of the said Act is repealed and the following substituted therefor: s. 258 (8), re-enacted

(8) Where a board provides one or more French-language elementary schools, a resident pupil of the board has the right to receive instruction in the English language and subsections (2), (3) and (3a) apply with necessary modifications in respect of the resident pupil and the board. English-language schools or classes

17. Clause 260 (a) of the said Act is amended by adding at the end thereof "or a secondary school board". s. 260 (a), amended

18. Subsections 261 (1), (2), as amended by the Statutes of Ontario, 1982, chapter 32, section 62, and subsection (3) of the said Act are repealed and the following substituted therefor: s. 261 (1-3), re-enacted

(1) Every French-speaking person who is qualified under this Act to be a resident pupil of a board has the right to receive secondary school instruction in a French-language instructional unit operated or provided by the board. Right to instruction in French-language instructional unit

(2) Every board that has one or more resident pupils who exercise their right to receive instruction in a French-language instructional unit shall establish and operate one or more French-language instructional units for those pupils or shall enter into an agreement with another board to enable those pupils to receive instruction in a French-language instructional unit operated by the other board. Duty of board to provide French-language instructional unit

(3) A board that provides a French-language instructional unit for secondary school instruction by means of an agreement with another board shall provide to each French-speaking resident pupil of the first-mentioned board who is a pupil in the French-language instructional unit and resides with the parent or other person who has lawful custody of the pupil more than twenty-four kilometres from the French-language instructional unit, Meals, lodging and transportation

(a) an allowance in an amount set by the board for meals and lodging for each day of attendance as certified by the principal in respect of the French-language instructional unit and for transportation once a week from the pupil's residence to the lodging and return; or

(b) daily transportation from the pupil's residence to the French-language instructional unit and return, where the parent or other person who has lawful custody of the pupil elects to have daily transportation.

s. 268 (1), re-enacted

19. Subsection 268 (1) of the said Act is repealed and the following substituted therefor:

Attendance of committee chairman at board committee meeting

(1) The chairman of the committee or a member of the committee designated by the chairman of the committee has the right to attend a meeting of a committee of the board, including a committee of the whole board, and shall be given the opportunity to be heard at the meeting in respect of any matter that affects French-speaking pupils and that is within the jurisdiction of the committee of the board or the committee of the whole board, as the case may be.

s. 271, repealed

20. Section 271 of the said Act is repealed.

s. 272 (1), amended

21. Subsection 272 (1) of the said Act is amended by striking out "number of pupils of the board elect" in the second and third lines and inserting in lieu thereof "pupil of the board elects".

s. 277 (2), re-enacted

22. Subsection 277 (2) of the said Act is repealed and the following substituted therefor:

Resolution by board

(2) Within thirty days of the receipt by the board of the recommendation of the Commission, the board shall resolve either to implement the recommendation or not to implement the recommendation.

Notice to Commission

(3) The board shall give to the Commission written notice of the resolution.

Where board resolves not to implement recommendation

(4) A board that resolves not to implement the recommendation shall also give to the Minister written notice of the resolution and shall give to the Minister and to the Commission written reasons for the decision.

Time for notices and reasons

(5) The board shall give the notices and reasons within the thirty day period mentioned in subsection (2).

23. The said Act is further amended by adding thereto the following sections: ss. 277a, 277b, enacted

277a.—(1) A board that resolves not to implement the recommendation of the Commission may rescind the resolution and resolve to implement the recommendation. Second resolution

(2) In the event of a conflict between subsection (1) and a by-law of the board, subsection (1) prevails. Conflict with by-law

(3) A board must act under subsection (1) within sixty days after receiving the recommendation of the Commission. Time for second resolution

277b.—(1) Where a board does not resolve to implement the recommendation of the Commission within the period of time mentioned in section 277 or 277a, as the case requires, the Commission shall reconsider the matter and shall make a written report and recommendation to the Minister in respect of the matter. Reconsideration by Commission

(2) The Minister shall consider the report and recommendation of the Commission under subsection (1) and shall make such order to the board or the Commission, or both, to deal with the matter as the Minister considers appropriate in the circumstances. Order by Minister

(3) The report and recommendation of the Commission are not binding upon the Minister, and the Minister is not required to give to any person an opportunity to make submissions or to be heard before making an order under subsection (2). Report and recommendation not binding on Minister

(4) An order by the Minister under subsection (2), exclusive of the reasons, if any, therefor may be filed in the office of the Registrar of the Supreme Court, whereupon the order shall be entered in the same way as a judgment or order of that court and is enforceable as an order of that court. Enforcement of order

(5) An order by the Minister under subsection (2), Service of order

(a) to a board is effective according to its terms when a copy is served upon the secretary of the board; and

(b) to the Commission is effective according to its terms when a copy is served upon the chairman of the Commission.

24.—(1) This Act, except sections 16, 17, 18, 20 and 21, comes into force on the day it receives Royal Assent. Commencement

Idem

(2) Sections 16, 17, 18, 20 and 21 come into force on the 1st day of September, 1984.

Short title

25. The short title of this Act is the *Education Amendment Act, 1983*.

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

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Bill 158

An Act to ensure the Regeneration and Reforestation of Forests in Ontario

Mr. Foulds

1st Reading December 15th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTE

The purpose of the Bill is to require the Ministry of Natural Resources to prepare a forest resource analysis and forest resource program at regular intervals to assist in ensuring the wise management of forest resources in Ontario.

The Bill also makes it a duty of the Minister to ensure that the forest resources of Ontario are managed on a sustained yield basis.

Bill 158 1983

An Act to ensure the Regeneration and Reforestation of Forests in Ontario

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Interpretation

1. In this Act,

(a) "Minister" means the Minister of Natural Resources;

(b) "Ministry" means the Ministry of Natural Resources;

(c) "sustained yield" means the growth of timber that a forest can produce and that can be cut to achieve a continuous approximate balance between growth of timber and timber cut.

Duty

2. It is the duty of the Minister to ensure that the forest resources of Ontario are managed on a sustained yield basis.

Forest resource analysis

3.—(1) Not later than the 31st day of October, 1984, the Minister shall prepare and submit to the Lieutenant Governor in Council a forest resource analysis containing,

(a) a description of the inventory of the forest resources in Ontario;

(b) a description of the location and extent of areas of forest land in Ontario that,

(i) have been denuded of timber through harvesting or otherwise and have not been restocked with commercially valuable species of timber, or

(ii) are producing timber at a rate that is substantially lower than their potential;

(c) a description of the programs of the Ministry respecting public and private forest management, protection, conservation, investment and research;

(d) an analysis of trends in and a forecast of,

(i) domestic and international demand for and uses of the forest resources in Ontario and products manufactured therefrom, and

(ii) the supply of the forest resources in Ontario and products manufactured therefrom in relation to the supply from areas outside Ontario; and

(e) a summary of developments in and questions of public policy that are expected to influence significantly and to affect the use, ownership, licensing and management of forest resources.

Subsequent analyses

(2) An analysis referred to in subsection (1) shall be prepared and submitted to the Lieutenant Governor in Council at least once in every ten year period following the date that the initial analysis is prepared and submitted.

Forest resource program

4.—(1) Not later than the 31st day of October, 1984, the Minister shall prepare and submit to the Lieutenant Governor in Council a forest resource program containing,

(a) a presentation of the alternatives available for re-stocking forest land, for increasing the productivity of forest land, and for otherwise improving forest resources in Ontario, identifying,

(i) the estimated capital and current expenditures associated with each alternative,

(ii) the estimated effect of each alternative on the productivity of the resources,

(iii) the estimated direct and indirect economic and social benefits and costs associated with each alternative, and

(iv) an assessment of the priorities that should be given to each alternative; and

(b) a program recommended to be implemented by the Ministry during the five year period beginning on the 1st day of April, 1985, for re-stocking forest land, for

increasing the productivity of forest land, and for otherwise improving forest resources in Ontario, including,

(i) a schedule for implementing the program,

(ii) the method to be used and priorities adopted for implementing the program, and

(iii) the respective roles to be played by the Crown and the private sector in implementing the program.

Subsequent programs

(2) A program referred to in subsection (1) shall be prepared and submitted to the Lieutenant Governor in Council at least once in every five year period following the date that the initial program is prepared and submitted.

Tabling in Assembly

5. When the Minister submits a forest resource analysis and forest resource program to the Lieutenant Governor in Council, the Minister shall lay a copy of the analysis or program before the Assembly if it is in session or, if not, at the commencement of the next ensuing session.

Annual report

6.—(1) The Minister shall submit to the Lieutenant Governor in Council an annual report concerning the work performed by the Ministry in respect of the forest resource analysis and forest resource program referred to in sections 2 and 3 and the Minister shall then lay a copy of the report before the Assembly if it is in session or, if not, at the commencement of the next ensuing session.

Idem

(2) The annual report shall include,

(a) a review of the forest resource program then in effect, a statement of the expenditures incurred to implement it, an assessment of the effect it has had on the productivity of forest resources in the Province and an analysis of the direct and indirect economic and social benefits and costs associated with its implementation; and

(b) a summary of forest land in the Province, showing areas denuded of forest during the year, areas restocked during the year and areas the productivity of which has been improved during the year.

Commencement

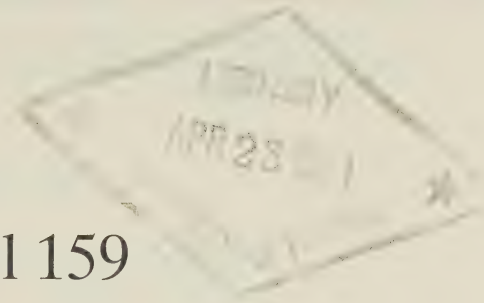
7. This Act comes into force on the day it receives Royal Assent.

Short title

8. The short title of this Act is the *Forest Resource Management Act, 1983*.

3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

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Bill 159

Insect Emblems Act, 1983

Mr. Foulds

1st Reading	December 15th, 1983
2nd Reading	
3rd Reading	
Royal Assent	

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTE

The Bill would adopt the black fly as the insect emblem of Northern Ontario and the mosquito as the insect emblem of Southern Ontario.

Bill 159 1983

Insect Emblems Act, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Insect emblem of Northern Ontario

1. The insect popularly known as the black fly is adopted as and shall be deemed to be the insect emblem of Northern Ontario.

Insect emblem of Southern Ontario

2. The insect popularly known as the mosquito is adopted as and shall be deemed to be the insect emblem of Southern Ontario.

Commencement

3. This Act comes into force on the day it receives Royal Assent.

Short title

4. The short title of this Act is the *Insect Emblems Act, 1983*.

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3RD SESSION, 32ND LEGISLATURE, ONTARIO 32 ELIZABETH II, 1983

Bill 160

LIBRARY APR 23 ...

An Act to revise the Limitations Act

The Hon. R. McMurtry
Attorney General

1st Reading December 16th, 1983
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

EXPLANATORY NOTES

This Bill consolidates and rationalizes the limitation provisions applicable to most civil proceedings. It draws upon the Ontario Law Reform Commission report on the limitation of actions, the draft *Limitations Act* presented to the Uniform Law Conference of Canada in 1979, the *Limitations Act* and the discussion paper on limitations published by the Ministry of the Attorney General in September, 1977.

The Bill centralizes the law of limitations by superseding many limitation provisions now spread through other Acts and by ensuring that no limitation applying to court actions will be missed if the Schedule to the Bill is checked.

Other principles in the Bill include the following:

1. A cause of action is not lost by passage of time unless the claimant was aware of his right of action.

2. An easement can not be acquired by the passage of time.

3. When a limitation period bars the commencement of an action, the right on which the action would be based is extinguished.

4. The law as to when the time begins to run, the effect of incapacity and other matters is developed and codified.

SECTION 21. The provisions repealed are limitation provisions that will be covered by section 3 of this Bill.

SECTIONS 22 to 27. The amendments are to a number of provisions in other statutes that require the giving of notice before an action is commenced. The amendments provide for relief from failure to give the notice in the time prescribed.

Bill 160 1983

An Act to revise the Limitations Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act, Interpretation

(a) "action" includes,

(i) any proceeding in a court, other than a proceeding to which the *Provincial Offences Act* applies, and R.S.O. 1980, c. 400

(ii) the exercise of a self-help remedy;

(b) "collateral" means real or personal property that is subject to an interest that secures payment or performance of an obligation;

(c) "Crown" means the Crown in right of Ontario, and, in so far as the legislative competency of the Legislature extends, includes the Crown in all its other capacities;

(d) "judgment" means a judgment or order of a court or an award in an arbitration to which the *Arbitrations Act* applies; R.S.O. 1980, c. 25

(e) "security agreement" means an agreement that creates or provides for an interest in collateral to secure payment or performance of an obligation;

(f) "trust" includes an express, implied, resulting or constructive trust, whether or not the trustee has a beneficial interest in the trust property and whether or not the trust arises only by reason of a transaction impeached, and includes the duties incident to the office of personal representative, but does not include the duties incident to the interest of a creditor in collateral.

Equitable defences preserved

2.—(1) Nothing in this Act interferes with,

(a) a rule of equity that refuses relief on the grounds of acquiescence or undue delay to a person whose cause of action is not extinguished under this Act; or

(b) a rule of common law or equity that establishes a limitation period or otherwise refuses relief in respect of proceedings by way of judicial review of the exercise of a statutory power.

Crown bound by Act

(2) This Act applies to actions by or against the Crown.

Limitation periods, 2 years

3.—(1) The following actions shall not be brought after the expiration of two years after the date on which the cause of action arose:

1. An action for damages in respect of injury to person or property, including economic loss arising from the injury, whether the action is based on contract, tort or statutory duty.

2. An action for trespass to property not included in paragraph 1.

3. An action for defamation.

4. An action for false imprisonment.

5. An action for malicious prosecution.

6. An action for conspiracy to commit any wrong referred to in paragraphs 1 to 5.

R.S.O. 1980, c. 152

7. An action under Part V of the *Family Law Reform Act*.

R.S.O. 1980, c. 298

8. An action against the Superintendent of Insurance under the *Motor Vehicle Accident Claims Act*.

9. A civil action to recover a fine or other penalty.

Idem, 6 years

(2) The following actions shall not be brought after the expiration of six years after the date on which the cause of action arose:

1. An action to recover a debt.

2. An action by a creditor not in possession of collateral to realize on the collateral.

3. An action by a debtor not in possession of collateral to redeem the collateral.

4. An action for damages for conversion or detention of goods.

5. An action to recover goods wrongfully taken or detained.

6. An action on a foreign judgment.

Idem, 10 years

(3) The following actions shall not be brought after the expiration of ten years after the date on which the cause of action arose:

1. An action against the personal representative of a deceased person for a share of the estate.

2. An action against a trustee in respect of fraud or fraudulent breach of trust to which the trustee was a party or of which he had knowledge.

3. An action against a trustee for the conversion of trust property to the trustee's own use.

4. An action to recover trust property or property into which trust property can be traced.

5. An action to recover money on account of a wrongful distribution of trust property against the person to whom the property is distributed or his successor.

6. An action on an Ontario judgment for the payment of money or the recovery of property.

7. An action to recover land.

8. An action to enforce an easement, restrictive covenant or *profit a prendre*.

Idem, 30 years

(4) An action by,

(a) a municipality to recover land not referred to in paragraph 4 of subsection (5); or

(b) the Crown to recover Crown land not referred to in paragraph 5 of subsection (5),

shall not be brought after thirty years after the date on which the cause of action arose.

Idem, no limitation

(5) The following actions are not governed by any limitation period and may be brought at any time:

1. An action by a debtor in possession of collateral to redeem the collateral.

2. An action by a creditor in possession of collateral to realize on the collateral.

3. An action relating to the enforcement of an injunction or a restraining order.

4. An action by a municipality or other public body to recover land that is included in a road allowance or reserved, set apart or laid out as a public highway, where the land is vested in the municipality or other public body.

5. An action by the Crown to recover,

   i. Crown land included in a road allowance or reserved, set apart or laid out as a public highway,

   ii. Crown land in an area without municipal organization,

   iii. Crown land covered by water, or

   iv. Crown land lying within fifty metres of the water's edge of a natural body of water.

6. An action for a declaration as to personal status.

7. An action for a declaration as to the title to property by a person in possession of the property.

Idem, 6 years

(6) Any action for which no provision as to limitation is made in subsections (1) to (5) or in any other Act shall not be brought after the expiration of six years after the date on which the cause of action arose.

"limitation of action" defined

4.—(1) In this section, "limitation of action" means the time limited for the commencement of a proceeding in a court by writ of summons or originating notice of motion, or the time limited for making, in such action, a claim referred to in subsection 5 (1), but does not include the time limited for appeals or applications by way of appeal or review.

Limitation of actions in other Acts

(2) The limitation of actions that are provided by or under an Act, other than this Act, are those set out in the Schedule to this Act, and any limitation of action that is provided by or under an Act other than this Act and not set out in the Schedule is of no effect.

Time of action on claim raised by counterclaim, etc.

5.—(1) For the purposes of section 3, where in an action a claim is made against a person by way of,

(a) a counterclaim, including a counterclaim in which a new party is added as a defendant by counterclaim;

(b) a crossclaim;

(c) a third or subsequent party claim;

(d) a claim for a set-off;

(e) the addition or substitution of a new party; or

(f) the amendment of a pleading or originating process,

the claim shall be deemed to have been made in an action commenced on the same date as the original action.

Idem, amendment

(2) An amendment of a pleading in an action is not barred for the reason that, between the commencement of the action and the application for amendment, the cause of action disclosed by the amendment would have been extinguished under this Act.

Idem, contribution between tortfeasors

(3) Where an action is brought against a tortfeasor, or a tortfeasor settles with a person who has a cause of action against him, within the limitation period fixed by this or any other Act, an action by the tortfeasor for contribution or indemnity against another tortfeasor shall not be brought after the expiration of one year after the date of the judgment in the action or of the settlement, as the case may be.

Times when cause of action arose

6.—(1) Except as otherwise provided in this section, the common law rules respecting the time at which a cause of action arises continue to apply.

Idem, breach of duty

(2) In an action based on strict liability or breach of a duty of care, whether the duty arises in tort or contract or by statute, the cause of action shall be deemed for the purposes of this Act to arise on the date on which damage first occurs.

Idem, R.S.O. 1980, c. 152

(3) In an action under section 7 or 8 of the *Family Law Reform Act*, the cause of action shall be deemed for the pur-

poses of this Act to arise on the date on which a decree *nisi* of divorce is pronounced between the spouses or their marriage is declared a nullity or the spouses separate with no reasonable prospect of the resumption of cohabitation, whichever is the later.

Idem, R.S.O. 1980, c. 152, Part V

(4) In an action under Part V of the *Family Law Reform Act*, the cause of action shall be deemed for the purposes of this Act to arise on the date on which the injury occurs.

Idem, R.S.O. 1980, c. 298

(5) In an action against the Superintendent of Insurance under the *Motor Vehicle Accident Claims Act*, the cause of action shall be deemed for the purposes of this Act to arise on the date on which the injury or damage occurs.

Idem, trust beneficiary

(6) In an action by a beneficiary of trust property with respect to his interest in the property, the cause of action shall be deemed for the purposes of this Act to arise on the date on which the interest becomes an interest in possession.

Conversion or detention of goods

7. Where a cause of action arises for the conversion or detention of goods, a further or continuing conversion or detention of the goods does not give rise to a new cause of action for the purposes of this Act.

Computation of time re recovery of land

8.—(1) A cause of action to recover land from adverse possession shall be deemed for the purposes of this Act to arise on the date on which the person in possession or his predecessor first enters into adverse possession of the land against the person claiming to be entitled to possession or his predecessor and a cause of action based upon further or continuing adverse possession shall be deemed to arise on the same date.

Idem

(2) Subsection (1) applies even though the cause of action based on further or continuing adverse possession arises out of an interest in the land that is different from the interest that gave rise to the cause of action referred to in subsection (1).

Idem, where interest becomes interest in possession

(3) Notwithstanding subsections (1) and (2), in an action to recover land by a person who had a future interest in the land which has become an interest in possession, the cause of action shall be deemed, for the purposes of this Act, to arise on the date on which the interest became an interest in possession.

Idem, co-tenants

(4) Where a co-tenant is in possession of the whole or more than his share of land, for his own benefit or the benefit of a person who is not another of the co-tenants, his possession shall not be deemed to be possession by another of the co-tenants.

Breach of trust; postponement

9.—(1) The limitation period fixed by paragraphs 2 and 3 of subsection 3 (3) for an action against a trustee in respect of fraud or fraudulent breach of trust to which the trustee was a party or of which he had knowledge or for the conversion of trust property to the trustee's own use does not begin to run against a beneficiary until he knows of the act or omission of the trustee on which the action is based.

Burden of proof

(2) For the purposes of subsection (1), the burden of proving that the limitation period has expired rests on the trustee.

Postponement of running of time; lack of knowledge

10.—(1) In an action,

(a) for personal injury;

(b) for damage to property;

(c) for economic loss arising from breach of a duty of care, whether the duty arises in tort or contract or by statute;

(d) for breach of trust, fraud or deceit where the action is not one referred to in section 9;

(e) for conspiracy to commit any wrong referred to in clauses (a) to (d);

(f) in which material facts relating to the cause of action have been wilfully concealed;

(g) for relief from the consequences of a mistake; or

(h) under Part V of the *Family Law Reform Act*, R.S.O. 1980, c. 152

the limitation period fixed by this Act does not begin to run against a person until he knows or, in all the circumstances of the case, he ought to know the identity of the defendant and sufficient facts to indicate that he has a cause of action.

Burden of proof

(2) The burden of proving that the running of the limitation period has been postponed under subsection (1) is on the person claiming the benefit of the postponement.

Purchasers for value

11. Sections 9 and 10 do not operate to the detriment of a purchaser for value acting in good faith.

Extension for estate of deceased person

12. Where a person having a cause of action dies and the cause of action would be extinguished within six months after his death by the expiration of a limitation period fixed by this

or any other Act, the cause of action shall be deemed not to be extinguished until six months after the date of his death.

Disability

13.—(1) For the purposes of this Act, a person is under a disability,

(a) while he is a minor; or

(b) while he is incapable of managing his affairs because of disease or impairment of his physical or mental condition.

Postponement of beginning of time to run

(2) Where a person is under a disability at the time his cause of action arises, the limitation period fixed by this or any other Act does not begin to run against him so long as he is under a disability.

Limitation on postponement

(3) Where the running of a limitation period against a person in respect of a cause of action has been postponed under subsection (2) and the person ceases to be under a disability, the limitation period governing the cause of action is the longer of,

(a) the period that the person would have had to bring the action if he had not been under a disability, running from the date on which the cause of action arose; and

(b) the period that the person would have to bring the action if the cause of action arose on the date on which the disability ceased, but in that case the period shall not extend more than six years after the date on which the disability ceased.

Suspension of running of time

(4) Where a person having a cause of action comes under a disability after a limitation period fixed by this or any other Act has begun to run but before the expiration of the limitation period, the running of the limitation period against him is suspended so long as he is under a disability.

Limit on suspension

(5) Where the running of a limitation period against a person in respect of a cause of action has been suspended under subsection (4) and the person ceases to be under a disability, the limitation period governing the cause of action is the longer of,

(a) the unexpired portion of the limitation period on the date on which the person came under the disability; and

(b) one year from the date on which the disability ceased.

Burden of proof

(6) The burden of proving that the running of the limitation period has been postponed or suspended under this section is on the person claiming the benefit of the postponement or suspension.

Notice to proceed

14.—(1) Notwithstanding section 13, where a person who is under a disability has a cause of action against another person, the other person may cause a notice to proceed to be delivered in accordance with this section, in which case the limitation period begins to run against the person who is under a disability as if he had ceased to be under a disability on the date on which the notice to proceed was delivered.

Form and contents of notice

(2) A notice to proceed shall,

(a) be in writing;

(b) be addressed and delivered,

(i) in the case of a minor, to the Official Guardian, and to a parent or other person having lawful custody of the minor and to any person who has been appointed guardian of the minor's property,

(ii) in the case of a person who is incapable of managing his affairs, to the Public Trustee and to the person's committee or, where there is no committee, to the person with whom he resides or in whose care he is;

(c) state the name of the person under a disability;

(d) specify the circumstances out of which a cause of action may arise or may be claimed to arise, with such particularity as is necessary to enable a determination to be made as to whether the person under a disability has a cause of action;

(e) give warning that any cause of action arising out of the circumstances stated in the notice is liable to be extinguished under this Act;

(f) state the name and address for service of the person on whose behalf the notice is delivered; and

(g) be signed by the person delivering the notice or his solicitor.

Exception where action against parent, guardian, etc.

(3) A notice to proceed shall not be delivered under subsection (1) in respect of a cause of action against a person to whom the notice to proceed must be addressed and delivered.

Limitation of benefits

(4) Subsection (1) operates to benefit only a person on whose behalf the notice is delivered and only in respect of a cause of action arising out of the circumstances specified in the notice.

Notice is not acknowledgment or admission

(5) A notice to proceed delivered under this section is not an acknowledgment for the purposes of this Act and is not an admission for any purpose.

Duty of Official Guardian or Public Trustee

(6) Where a notice to proceed is delivered to the Official Guardian or the Public Trustee and it appears to him that the other person to whom the notice was delivered is failing to take reasonable steps to protect the interests of the person under a disability or is otherwise acting to his prejudice, the Official Guardian or the Public Trustee shall investigate the circumstances specified in the notice, and may commence and maintain an action for the benefit of the person under a disability if he believes that the action would have a reasonable prospect of succeeding and would result in a judgment that would justify the bringing of the action.

Acknowledgment

15.—(1) In this section, "acknowledgment" means,

(a) an acknowledgment in writing signed by the person making it or his agent; or

(b) a part payment made by a debtor or his agent.

Effect of acknowledgment

(2) Where,

(a) a person makes an acknowledgment of a cause of action for recovery of property or a liquidated sum or for enforcement or relief from enforcement of a charge on property; and

(b) the acknowledgment is made before the cause of action is extinguished to a person having the cause of action or his agent or successor, or to an official receiver or trustee acting under the *Bankruptcy Act* (Canada),

R.S.C. 1970, c. B-3

for the purpose of determining the limitation period fixed by this or any other Act for an action by the person to whom the acknowledgment is made or his successor against the person making the acknowledgment, the cause of action shall be deemed to arise on the date on which the acknowledgment is communicated to the person to whom the acknowledgment is made.

Acknowledgment of debt

(3) An acknowledgment of a cause of action for recovery of a liquidated sum need not include a promise to pay and is effective even though it includes a refusal to pay.

Acknowledgment of interest owing

(4) An acknowledgment of a cause of action for recovery of interest operates also as an acknowledgment of a cause of action for the principal sum and for interest later falling due on the principal sum.

Payment under security agreement

(5) Payment by a debtor to a creditor in respect of a security agreement or performance by a debtor of an obligation under a security agreement operates as an acknowledgment of a cause of action by the creditor against the debtor for realization on the collateral under the security agreement.

Acceptance of payment under security agreement

(6) Acceptance by a creditor of payment by a debtor in respect of a security agreement or of performance by a debtor under a security agreement operates as an acknowledgment of a cause of action by the debtor against the creditor for redemption of the collateral under the security agreement.

Acknowledgment by trustee

(7) An acknowledgment by a person who is a trustee at the time he makes the acknowledgment operates as an acknowledgment by any other person who is or later becomes a trustee of the same trust.

Acknowledgment by person in possession

(8) An acknowledgment by a person who is in possession of property or collateral of a cause of action,

(a) to recover the property;

(b) to enforce an equitable interest in the property;

(c) to realize on the collateral;

(d) to redeem the collateral;

(e) to recover money under a security agreement in respect of the collateral; or

(f) to recover the property as trust property or as property into which trust property can be traced,

operates as an acknowledgment by any other person later in possession of the property or collateral, except a person who was also in possession of the property or collateral on the date of the acknowledgment.

Extinguishment of rights

16.—(1) A cause of action and the right or title on which it is based are extinguished upon the expiration of the limitation period for the cause of action.

Revival by extension

(2) Where under the authority of any other Act an order extending a limitation period is made after the limitation period has expired, the order revives the cause of action and the right or title on which it is based.

Completion of enforcement process

17.—(1) Notwithstanding sections 3 and 16, where, on the expiration of the limitation period fixed by this Act with respect to an action on a judgment, there is an enforcement process outstanding, the judgment creditor or his successor may,

(a) continue proceedings on an unexpired writ of execution, but the writ shall not be renewed; or

(b) continue proceedings in which a charging order is claimed.

Orders staying executions

(2) Where a court makes an order staying execution on a judgment, the running of the limitation period fixed by this Act for an action on the judgment is postponed or suspended for so long as the order is in force.

Prescriptive rights

18.—(1) No person acquires an easement or *profit a prendre* by prescription.

Lost modern grant

(2) No person shall be presumed to have acquired an easement over land by grant of the owner by reason only of long use or enjoyment.

Conflict of laws

19. The Ontario law of limitations and the analogous law of any other province or territory of Canada, or of any state or country, shall be characterized as substantive law for the purposes of the application of the rules of the conflict of laws, whether or not the particular law bars the remedy or extinguishes the right.

Application of Act

20.—(1) This Act applies to causes of action that arose before this Act comes into force as well as to causes of action that arise after this Act comes into force.

(2) Nothing in this Act revives a cause of action in respect of which the limitation period has expired before this Act comes into force. Barred action not revived

(3) Where, Limit on reduction of pre-existing limitation periods

(a) a cause of action that arose before this Act comes into force was formerly not governed by a limitation period or the limitation period fixed by this Act is shorter than the limitation period that formerly governed it; and

(b) the limitation period fixed by this Act would have expired before this Act comes into force or less than two years after this Act comes into force,

the limitation period for the cause of action is the shorter of,

(c) the limitation period, if any, that formerly governed it; and

(d) two years from the date on which this Act comes into force.

(4) Section 15 applies to an acknowledgment made before this Act comes into force. Application of s. 15

21.—(1) The *Limitations Act*, being chapter 240 of the Revised Statutes of Ontario, 1980, is repealed. R.S.O. 1980, c. 240, repealed

(2) The following special limitation provisions are repealed: Special limitation provisions repealed

1. **Section 25 of the *Ambulance Act*, being chapter 20 of the Revised Statutes of Ontario, 1980.**

2. **Section 31 of the *Denture Therapists Act*, being chapter 115 of the Revised Statutes of Ontario, 1980.**

3. **Subsections 87 (13) and (14) of the *Environmental Protection Act*, being chapter 141 of the Revised Statutes of Ontario, 1980.**

4. **Subsection 2 (5) of the *Family Law Reform Act*, being chapter 152 of the Revised Statutes of Ontario, 1980.**

5. **Section 41 of the *Funeral Services Act*, being chapter 180 of the Revised Statutes of Ontario, 1980.**

6. **Section 17 of the *Health Disciplines Act*, being chapter 196 of the Revised Statutes of Ontario, 1980.**

7. Section 180 of the *Highway Traffic Act*, being chapter 198 of the Revised Statutes of Ontario, 1980.

8. Subsection 226 (2) of the *Insurance Act*, being chapter 218 of the Revised Statutes of Ontario, 1980.

9. Section 6 of the *Libel and Slander Act*, being chapter 237 of the Revised Statutes of Ontario, 1980.

10. Section 62 of the *Mental Health Act*, being chapter 262 of the Revised Statutes of Ontario, 1980.

11. Section 9 of the *Mental Hospitals Act*, being chapter 263 of the Revised Statutes of Ontario, 1980.

12. Section 16 of the *Motor Vehicle Accident Claims Act*, being chapter 298 of the Revised Statutes of Ontario, 1980.

13. Subsection 284 (2) of the *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980.

14. Section 9 of the *Negligence Act*, being chapter 315 of the Revised Statutes of Ontario, 1980.

15. Subsection 30 (1) of the *Ontario Mental Health Foundation Act*, being chapter 345 of the Revised Statutes of Ontario, 1980.

16. Subsection 31 (1) of the *Power Corporation Act*, being chapter 384 of the Revised Statutes of Ontario, 1980.

17. Section 51 of the *Private Sanitaria Act*, being chapter 391 of the Revised Statutes of Ontario, 1980.

18. Subsection 28 (1) of the *Professional Engineers Act*, being chapter 394 of the Revised Statutes of Ontario, 1980.

19. Section 11 of the *Public Authorities Protection Act*, being chapter 406 of the Revised Statutes of Ontario, 1980.

20. Section 28 of the *Public Hospitals Act*, being chapter 410 of the Revised Statutes of Ontario, 1980.

21. Section 12 of the *Public Officers Act*, being chapter 415 of the Revised Statutes of Ontario, 1980.

22. Subsection 33 (5) of the *Public Transportation and Highway Improvement Act*, being chapter 421 of the Revised Statutes of Ontario, 1980.

23. Section 32 of the *Public Utilities Act*, being chapter 423 of the Revised Statutes of Ontario, 1980.

24. Section 13 of the *Radiological Technicians Act*, being chapter 430 of the Revised Statutes of Ontario, 1980.

25. Subsection 139 (4) and subsections 267 (1) and (2) of *The Railways Act*, being chapter 331 of the Revised Statutes of Ontario, 1950.

26. Section 72 of the *Surrogate Courts Act*, being chapter 491 of the Revised Statutes of Ontario, 1980.

27. Section 86 of the *Telephone Act*, being chapter 496 of the Revised Statutes of Ontario, 1980.

28. Subsection 38 (7) of the *Trustee Act*, being chapter 512 of the Revised Statutes of Ontario, 1980.

29. Section 17 of the *Veterinarians Act*, being chapter 522 of the Revised Statutes of Ontario, 1980.

22. Subsection 60 (4) of the *Family Law Reform Act*, being chapter 152 of the Revised Statutes of Ontario, 1980, is amended by striking out "and no such action shall be brought after the expiration of two years from the time the cause of action arose" in the second, third and fourth lines. R.S.O. 1980, c. 152, s. 60 (4), amended

23.—(1) Subsection 5 (1) of the *Libel and Slander Act*, being chapter 237 of the Revised Statutes of Ontario, 1980, is amended by striking out "six weeks" in the second line and inserting in lieu thereof "three months". R.S.O. 1980, c. 237, s. 5 (1), amended

(2) Section 5 of the said Act is amended by adding thereto the following subsection: s. 5, amended

(1a) Failure to give or the insufficiency of the notice of claim under subsection (1) is not a bar to the action if the court is of the opinion that the defendant was not prejudiced by the want or insufficiency of the notice and that an injustice would result if the action were barred. Failure to give notice

24. Section 284 of the *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection: R.S.O. 1980, c. 302, s. 284, amended

Failure to give notice

(5a) Failure to give or the insufficiency of the notice of claim under subsection (5) is not a bar to the action if the court is of the opinion that the defendant was not prejudiced by the want or insufficiency of the notice and that an injustice would result if the action were barred.

R.S.O. 1980, c. 384, s. 31, amended

25. Section 31 of the *Power Corporation Act*, being chapter 384 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

Failure to give notice

(2a) Failure to give or the insufficiency of the notice of claim under subsection (2) is not a bar to the action if the court is of the opinion that the defendant was not prejudiced by the want or insufficiency of the notice and that an injustice would result if the action were barred.

R.S.O. 1980, c. 393, s. 7, amended

26. Section 7 of the *Proceedings Against the Crown Act*, being chapter 393 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

Failure to give notice

(4) Failure to give notice of a claim within the time prescribed by subsection (3) is not a bar to the action if the court is of the opinion that the Crown was not prejudiced by the delay in giving notice and that an injustice would result if the action were barred.

R.S.O. 1980, c. 421, s. 33, amended

27. Section 33 of the *Public Transportation and Highway Improvement Act*, being chapter 421 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

Failure to give notice

(4a) Failure to give or the insufficiency of the notice of claim under subsection (4) is not a bar to the action if the court is of the opinion that the defendant was not prejudiced by the want or insufficiency of the notice and that an injustice would result if the action were barred.

Commencement

28. This Act comes into force on the 1st day of July, 1984.

Short title

29. The short title of this Act is the *Limitations Act, 1983*.

SCHEDULE

ACT	PROVISION
Assessment Act	s. 51
Assignments and Preferences Act	s. 26 (2)
Bulk Sales Act	s. 19
Business Corporations Act, 1982	ss. 34 (6); 130 (7); 131 (2) 138 (6); 156 (2); 184 (16), (17); 187 (9); 242 (1); 258
Condominium Act	s. 54 (2)
Co-operative Corporations Act	ss. 72 (2); 99 (2); 100; 103 (2); 111 (2); 168 (1); 169 (1)
Corporations Act	ss. 37 (2); 76 (2); 81 (2); 321 (1)
County of Oxford Act	s. 104 (2)
Creditors' Relief Act	ss. 12 (2); 32 (6)
Credit Unions and Caisses Populaires Act	s. 123 (1)
District Municipality of Muskoka Act	s. 94 (2)
Drainage Act	ss. 58 (2); 111 (2)
Education Act	ss. 134 (7); 194 (2)
Election Act	ss. 112 (2); 148 (4); 162 (1)
Elevating Devices Act	s. 23 (2)
Employment Agencies Act	s. 8 (1)
Environmental Protection Act	s. 96 (1)
Expropriations Act	s. 22
Fines and Forfeitures Act	s. 6 (2)
Fire Marshals Act	s. 18 (6)
Gaming Act	s. 3
Hotel Fire Safety Act	s. 15 (4)
Insurance Act	ss. 183; 125, Statutory Condition 14; 207, Statutory Condition 6 (3); 226 (2); 238; 253, Statutory Condition 12
Lakes and Rivers Improvement Act	s. 86 (1)
Lightning Rods Act	s. 13 (2)
Liquor Licence Act	s. 56 (2)
Loan and Trust Corporations Act	ss. 46 (2); 69 (2)
Mortgages Act	s. 20 (2)
Municipal Act	ss. 44 (2); 137 (3); 141; 156 (2); 304 (4); 453 (1)
Municipal Conflict of Interest Act, 1983	s. 9 (1), (3)
Municipal Elections Act	s. 106 (4)
Municipality of Metropolitan Toronto Act	s. 232 (2)
Ontario Water Resources Act	s. 54
Operating Engineers Act	s. 25 (2)
Psychologists Registration Act	s. 8 (1)
Public Accountancy Act	s. 21
Regional Municipality of Durham Act	s. 116 (2)
Regional Municipality of Haldimand-Norfolk Act	s. 98 (2)
Regional Municipality of Halton Act	s. 109 (2)
Regional Municipality of Hamilton-Wentworth Act	s. 120 (2)
Regional Municipality of Niagara Act	s. 148 (2)
Regional Municipality of Ottawa-Carleton Act	s. 139 (2)
Regional Municipality of Peel Act	s. 104 (2)
Regional Municipality of Sudbury Act	s. 90 (2)
Regional Municipality of Waterloo Act	s. 138 (2)

Regional Municipality of York Act	s. 111 (2)
Securities Act	ss. 133 (5); 135
Small Business Development Corporations Act	s. 33
Succession Law Reform Act	s. 61
Tile Drainage Act	s. 2 (3)
Woodmen's Lien for Wages Act	s. 29 (1)

Bill 161

(Chapter 89
Statutes of Ontario, 1983)

LIBRARY
APR 23

An Act for granting to Her Majesty certain sums of money for the Public Service for the fiscal year ending the 31st day of March, 1984

The Hon. L. Grossman
Treasurer of Ontario and Minister of Economics

1st Reading	December 16th, 1983
2nd Reading	December 16th, 1983
3rd Reading	December 16th, 1983
Royal Assent	December 16th, 1983

Printed under authority of the Legislative Assembly
by the Queen's Printer for Ontario

Bill 161 1983

An Act for granting to Her Majesty certain sums of money for the Public Service for the fiscal year ending the 31st day of March, 1984

MOST GRACIOUS SOVEREIGN:

Whereas it appears by messages from the Honourable John B. Aird, Lieutenant Governor of the Province of Ontario, and from the estimates and supplementary estimates accompanying the same, that the sums mentioned in the Schedule to this Act are required to defray certain charges and expenses of the public service of this Province, not otherwise provided for, for the fiscal year ending the 31st day of March, 1984; may it therefore please Your Majesty that it be enacted and it is hereby enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, as follows:

\$22,076,174,500 granted for fiscal year 1983-84

1.—(1) There may be paid out of the Consolidated Revenue Fund a sum not exceeding in the whole $22,076,174,500 to be applied towards defraying the several charges and expenses of the public service, not otherwise provided for, from the 1st day of April, 1983, to the 31st day of March, 1984, as set forth in the Schedule to this Act, and, subject to subsection (2), such sum shall be paid and applied only in accordance with the votes and items of the estimates and supplementary estimates upon which the Schedule is based.

Exception

(2) Where, in the fiscal year ending the 31st day of March, 1984, powers and duties are assigned and transferred from one minister of the Crown to another minister of the Crown, the appropriate sums in the votes and items of the estimates and supplementary estimates upon which the Schedule is based that are approved to defray the charges and expenses of the public service in the exercise and performance of such powers and duties, may be assigned and transferred from time to time as required by certificate of the Management Board of Cabinet to the ministry administered by the minister to whom the powers and duties are so assigned and transferred.

Accounting for expenditure

2. The due application of all moneys expended under this Act shall be accounted for to Her Majesty.

Commencement

3. This Act comes into force on the day it receives Royal Assent.

Short title

4. The short title of this Act is the *Supply Act, 1983*.

SCHEDULE

	ESTIMATES $	SUPPLEMENTARY ESTIMATES $	TOTAL $
Office of the Lieutenant Governor	341,200		341,200
Office of the Premier	2,200,300		2,200,300
Cabinet Office	1,623,000		1,623,000
Management Board	220,572,900		220,572,900
Government Services	372,403,300		372,403,300
Intergovernmental Affairs	7,021,400		7,021,400
Northern Affairs	158,457,900		158,457,900
Revenue	605,644,100	19,763,000	625,407,100
Treasury and Economics	305,635,000	149,347,000	454,982,000
Office of the Assembly	30,830,900	1,932,600	32,763,500
Office of the Provincial Auditor	4,140,900		4,140,900
Office of the Ombudsman	5,473,000		5,473,000
Justice Policy	1,228,800		1,228,800
Attorney General	238,459,500	19,373,500	257,833,000
Consumer and Commercial Relations	102,225,700	6,648,900	108,874,600
Correctional Services	218,541,600		218,541,600
Solicitor General	294,211,800		294,211,800
Resources Development Policy	3,384,000		3,384,000
Agriculture and Food	239,723,900		239,723,900
Energy	137,239,800		137,239,800
Environment	312,868,500		312,868,500
Industry & Trade	75,077,500	1,376,000	76,453,500
Labour	69,995,000		69,995,000
Municipal Affairs & Housing	1,042,341,000	7,072,000	1,049,413,000
Natural Resources	392,963,500	9,925,000	402,888,500
Tourism & Recreation	110,632,400		110,632,400
Transportation and Communications	1,475,879,500	55,428,000	1,531,307,500
Social Development Policy	11,624,800	2,805,500	14,430,300
Citizenship & Culture	191,279,400	3,000,000	194,279,400
Colleges and Universities	2,045,371,100		2,045,371,100
Community & Social Services	2,260,616,200	122,849,000	2,383,465,200
Education	3,144,810,100		3,144,810,100
Health	7,511,836,000	82,000,000	7,593,836,000
TOTAL	21,594,654,000	481,520,500	22,076,174,500

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